

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DIAMOND CONSORTIUM,
INC., ET AL

DOCKET NO. 4:16CV94

JULY 12, 2017

VS.

1:45 P.M.

BRIAN MANOOKIAN, ET AL

PLANO, TEXAS

VOLUME 1 OF 1, PAGES 1 THROUGH 167

REPORTER'S TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

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1 (OPEN COURT, ALL PARTIES PRESENT.)

2 THE COURT: All right. Good afternoon. We're
3 here in the matter of 4:16CV94, *Diamond Consortium, Inc.,*
4 *et al v. Brian Manookian, et al.*

06:40AM

5 Can we have appearances for the record,
6 please?

7 (Indiscernible.)

8 THE COURT: Good afternoon.

06:40AM

9 MR. SCHWEGMANN: Good afternoon, your Honor,
10 Chris Schwegmann and Andres Correa for the defendants.

11 MR. JOHNSTON: We have other counsel for the
12 plaintiffs, so that the record is complete, your Honor.

13 THE COURT: Yes. Thank you.

14 You can go ahead.

06:41AM

15 MR. STECKLER: Bruce Steckler and Kirstine
16 Rogers for the plaintiffs.

17 MR. SANDERS: And local counsel Roger Sanders.

06:41AM

18 THE COURT: All right. We're here today on
19 Plaintiffs' Emergency Motion to Show Cause (contempt and
20 sanctions). I have read all of the briefing in this
21 case. However, because this case has been going on for a
22 while and I am new to the case, I wanted to hear argument
23 from counsel. So, I do have some questions; but I'm
24 going to hear from counsel first. And if you don't

06:42AM

25 answer questions, then I -- I may interrupt you and I may

1 wait until you're finished to ask them so...

2 Counsel.

3 MR. JOHNSTON: Your Honor, (indiscernible) the
4 presentation of evidence as well and we are prepared to
06:42AM 5 introduce evidence, but I do have an opening that I think
6 explains why we are here today. And candidly, it is
7 because there has been conduct by attorneys licensed in
8 the state of Tennessee and aided in part, hopefully
9 unknowingly, by officers of this court that have been
06:42AM 10 publicly harassing and ridiculing our client Mr. Blank,
11 that have made a mockery of this court's protective order
12 and the discovery rules and the general judicial process.
13 And there are four things that I would point out to the
14 court that we would hope to accomplish today.

06:43AM 15 One of them is to demonstrate to the court
16 three websites maintained by an organization we refer to
17 as shorthand as "DISF," Diamond Integrity Standards fund.
18 That is what we refer to as the "Victim Fund website,"
19 the "Sales Tax Fraud website," and the "Sue David Blank
06:43AM 20 website" established respectfully May 10 of this year,
21 June 19 of this year, and July 7 of this year, as far as
22 we know.

23 THE COURT: What is the third one?

24 MR. JOHNSTON: The *suedavidblank.com* website
06:43AM 25 established just a few days ago. Or at least it came to

1 our attention on July the 7.

2 THE COURT: Okay.

3 MR. JOHNSTON: One of the things we intend to
4 demonstrate for the court is the connection between DISF
06:44AM 5 and Mr. Manookian; and we believe it's candidly an alter
6 ego of him, a device being used to mock this court and
7 ridicule the plaintiff. And the evidence will include
8 evidence that he is the registered agent and incorporator
9 of it. He says in his declaration he is not on the board
06:44AM 10 of directors but does not tell us who is. The website
11 templates cross-reference his law firm back and forth;
12 and if you click on the admin site for the DISF websites,
13 it says that the administrator of those websites is the
14 Cummings Manookian law firm.

06:44AM 15 The third point is -- well, the third point is
16 the misuse of customer information and discovery abuse
17 and shockingly incredible questions that remain
18 unanswered with regard to the customer list of the
19 Diamond Doctor. The defendants have demanded that
06:45AM 20 information from day 1, have filed motions to compel.

21 They have repeatedly in pleadings to this court said that
22 every customer is a witness and then we find that they
23 have this information already and it is disclosed on all
24 three of those websites in various forms -- sometimes
06:45AM 25 full names with full phone numbers and addresses and the

1 dollar amounts even of the diamond purchases;
2 sometimes -- and I will tell the court these websites
3 have been changed over time. We make a complaint, and a
4 name may be -- the last name may be removed and then an
5 initial put up or partial phone numbers put up, websites
6 taken down and then reappear at a pace that candidly we
7 have trouble keeping track of.

8 But we now know that they had this information
9 all the time and demanded that we produce it and sought
10 sanctions for our not producing it, even though we got a
11 court order protecting us from producing it. They
12 refused to produce it to us, when we had discovery
13 requests out for them. At no time did they ever indicate
14 to us they already had these customer lists.

15 And then lastly, what I would call the "calls
16 and e-mails sections" of our relief -- or of our
17 complaints and then our relief. The defendant
18 Mr. Manookian has admitted to 175 robo-calls to customers
19 even though it didn't get that information from us. He
20 has admitted that every customer is a witness, and he
21 denies that he has made robo-calls to witnesses. He says
22 these people were carefully selected, but we don't know
23 how. He says they couldn't possibly be a witness or a
24 juror, but he said every customer is a witness.

25 We also have e-mails to media seeking to

1 publicize these derogatory websites about -- and they're
2 really incredibly distasteful and designed specifically
3 to harass and not educate, and we'll demonstrate that to
4 the court.

06:47AM

5 And then lastly, we have Mr. Manookian
6 admitting to violating the court's order by personally
7 calling three customers. We think there are more than
8 that.

06:47AM

9 I will tell the court one of the accusations
10 we made in our motion we will withdraw and will submit no
11 evidence in support of, and that was our claim that
12 Mr. Manookian called Mr. Blank's mother. His mother does
13 not want to testify. We are dropping that allegation.

06:48AM

14 She candidly has some deteriorating mental faculties
15 anyway; and, so, we don't intend to introduce evidence on
16 that.

06:48AM

17 In the end we think that we'll demonstrate
18 that there has been significant unjustified interference
19 with the judicial process of this court and with the
20 rights of our clients to a fair trial; and we'll at that
21 time then discuss the relief we want, your Honor.

06:49AM

22 THE COURT: All right. One question. With
23 regards to who owns the client information of your
24 client, does your client own that information? I know
25 there was some allegations made in defendants' response

1 that another entity owns that information. Can you
2 address that?

3 MR. JOHNSTON: That's accurate, your Honor.
4 The Diamond Doctor sold its assets to Diamonds Direct,
06:49AM 5 and that includes the customer list. Mr. Blank is under
6 a covenant and obligation in that sales agreement to
7 continue to protect that information. In fact, we have
8 communicated with them asking them if they are the source
9 of the customer list going to Mr. Manookian. Somewhat
06:49AM 10 coincidentally, Mr. Manookian is an attorney for Diamonds
11 Direct. Diamonds Direct has mandated that we keep that
12 information secret and not let it out; and, yet, their
13 own lawyer, through this website, has let it out.

14 So, the specific ownership of the customer
06:50AM 15 list is not Mr. Blank anymore, although he has a lot of
16 that information in his head. He has access to that
17 information. He continues to be a consultant. I'm not
18 sure if he's an employee or independent consultant of
19 Diamonds Direct pursuant to that sales agreement.

06:50AM 20 Is that an adequate answer, your Honor?

21 THE COURT: It is, I think, for now. I don't
22 completely understand Mr. Manookian's representation of
23 Diamond Direct but --

24 MR. JOHNSTON: Nor do we, your Honor.

06:50AM 25 THE COURT: Okay. All right.

1 MR. JOHNSTON: Thank you, your Honor.

2 MR. SCHWEGMANN: Good afternoon, your Honor.

3 My name is Chris Schwegmann. I'm here for the
4 defendants.

06:51AM

5 I'm not sure where to start. I don't believe
6 this was the right time, place, or even parties for the
7 court to hear some of the issues before it; but let me
8 start by saying we believe from our perspective this is
9 just part of Mr. Blank and the Diamond Doctor's

06:51AM

10 continuing efforts to suppress truthful information being
11 reported about his former business. Now, they may find
12 it distasteful; the court might find it distasteful; but
13 it, in fact, is protected by the First Amendment. And in
14 fact, the speaker is DISF that's not a party before this
15 court involving information owned by a party also not
16 before this court. Get to that in a second.

06:51AM

17 But if the court would indulge me, just a few
18 statements of background. You said you were new to the
19 case; you said you read the briefs. But I think it's
20 important to emphasize a few points that make this motion
21 particularly rich to be heard.

06:52AM

22 My clients, they're lawyers from Tennessee;
23 and they uncovered years ago in the diamond industry this
24 massive fraud, this overgrading of diamonds. Not just
25 the Diamond Doctor but other jewelers around the country

06:52AM

06:52AM

1 would sell diamonds overgraded at inflated prices
2 to consumers. They began to advertise these claims,
3 get clients, and bring effectively DTPA-type claims
4 around the country. They discovered the Diamond
5 Doctor was engaged in this same type of fraud and
6 started advertising back in -- I guess it's October,
7 2015.

06:53AM

8 These folks filed this as an emergency motion;
9 but, your Honor, this type of speech in advertising has
10 been around for more than 2 years. Yet, they're bringing
11 this motion 60 days before trial.

06:53AM

12 What was the Diamond Doctor's response to that
13 initial set of advertising? Well, hired lawyers, decided
14 that the best defense was a good offense; and he did a
15 number of things.

16 First, he sued these folks, my clients, in
17 state court. Judge Ginsburg threw that out.

06:53AM

18 He then brought a suit in the Eastern District
19 of Texas, brought another suit in the Northern District
20 of Texas. He sued three times in three different venues.
21 Got consolidated. That's why we're here today in the
22 Eastern District.

06:53AM

23 The Diamond Doctor filed numerous bar
24 complaints against these folks. But what's more
25 significant, he hired a public relations firm to put as

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1 much information in the public domain as possible. There
2 was a front-page ad -- I mean, I'm sorry, not ad --
3 article in the *Dallas Morning News* I guess it was about a
4 year ago in the Sunday edition where his public relations
5 firm engineered to get as much of this in the public as
6 possible. The court might -- we have a copy of the
7 article, and I'm happy to show it when we get to that
8 point. There's e-mails that show his public relations
9 firm wanted to discredit Manookian, and part of that
10 strategy involved -- and we didn't hear Mr. Johnston say
11 anything about this -- but part of his strategy was to
12 create and author his own attack websites directed at my
13 clients.

14 So, what did he do? He opened a number of
15 websites, wrote the content, called my client a "crooked
16 law firm," called it a "criminal enterprise." He even
17 went so far as to forge an engagement agreement and post
18 that on the website suggesting to the public that they
19 had an attorney-client relationship. This is what the
20 plaintiffs have done in this case. And those websites,
21 until just recently, a few weeks ago, were still online
22 where potential jury members and potential witnesses
23 could *Google* them and find it just the same.

24 Now --

25 THE COURT: I'm going to interrupt you. I

1 don't -- I mean, that may all be; but the issues here
2 today are different. I mean, No. 1, plaintiffs are
3 saying there's customer proprietary information on the
4 websites. No. 2, they've made allegations -- and I
5 believe your clients have admitted to -- to contacting
6 witnesses in this case and directing them to websites.
7 And that conduct is different than what you just spoke
8 of.

06:55AM

9 MR. SCHWEGMANN: It is. My point in giving
10 you the background, your Honor, is really to say this is
11 not an emergency. None of this is new. And what's
12 different here today in part is this involves the DISF,
13 which you'll hear, if we hear evidence, is a separate,
14 independent entity that published these websites. That
15 entity is not a party here. The information that's
16 published on those websites is owned by an entity,
17 Diamonds Direct, that is also not a party here.

06:55AM

06:55AM

18 So, what they're effectively seeking, although
19 they don't style it this way -- what they're effectively
20 seeking is an injunction, a prior restraint, something to
21 make my client take off the Internet something he doesn't
22 have direct control of. And it involves an entity not
23 even within this court's jurisdiction involving
24 information no longer within this court's jurisdiction.
25 If what they want is a prior restraint on the website,

06:56AM

06:56AM

1 they know where to find the representative. They served
2 DISF. They can depose DISF, and they can go seek their
3 injunction in the appropriate jurisdiction involving the
4 appropriate party.

06:56AM

5 THE COURT: I think they tried to do that, and
6 you filed a motion to quash that's now pending. So --

06:56AM

7 MR. SCHWEGMANN: It is pending in Tennessee,
8 and we have said that we will help -- well, we don't
9 represent DISF. And you can hear from Mr. Manookian but
10 he is DISF's lawyer and my understanding is that he will
11 make available a corporate representative to testify
12 regarding all the facts they want to hear about. But
13 what they're asking for -- and candidly, I'm not sure
14 what they're asking for in terms of relief today. They
15 don't specify in their motion. But sounds like what they
16 want is some sort of prior restraint without having to
17 brief any of the First Amendment issues, without having
18 to join any of the proper parties, and without having to
19 step through any of those issues.

06:57AM

20 And what's interesting, your Honor, is there's
21 a Fifth Circuit case that candidly none of the parties
22 cited but that's directly on point. And I'm going to at
23 least provide the court with the cite. It's *Marceaux*
24 *versus Lafayette City*; it's 731 F.3d 488. It involves a
25 situation very similar to this one where the plaintiff

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1 was a group of police officers and were suing the police
2 department in Lafayette, Louisiana; and the plaintiffs
3 put on an attack website that attacked the police
4 department, attacked the sheriff. By the way, this is a
5 2013 opinion. And the police department said, "No, you
6 got to take down the website. It's poisoning the jury
7 pool." And the lower court did exactly that, entered an
8 order telling the plaintiff policemen to take it down.
9 They appealed, and the Fifth Circuit reversed and said
10 no. And they analyzed it under the prior restraint
11 doctrine.

12 Now, that case, at a least all the proper
13 parties were within the court's jurisdiction involving
14 information within the court's jurisdiction. This case
15 involves DISF, not a party, involving information owned
16 by someone else. And again, that cite is 731 F.3d 488.

17 But, your Honor, let me address the specific
18 allegations. What you'll see attached to their motion
19 really is no evidence. There's no affidavit or
20 declaration from anyone who says they have been
21 intimidated or threatened. There's -- they withdrew the
22 allegation concerning the plaintiff's mother. But just
23 so the record is clear, if Mr. Manookian testifies, he'll
24 say he never called her. There's no evidence that any --
25 other than the existence of the websites, there's no

1 evidence that any potential juror ever even looked at
2 that. There's no *Google* analytics or anything that would
3 suggest that anyone from the Eastern District of Texas
4 looked at it, anyone other than the Diamond Doctor's
06:59AM 5 customers who incidentally wouldn't be impaneled on the
6 jury anyway because of their relationship with the
7 plaintiff. There's just no evidence at all to cause this
8 court to enter any relief.

9 The fact of the matter is they can take the
06:59AM 10 deposition of DISF once they step through the appropriate
11 hoops and they're going to get to take the deposition of
12 my clients and we've offered dates to take their
13 depositions on numerous occasions. So, you know, I'm
14 happy to walk through all of these issues if the court
06:59AM 15 has questions but, frankly, there's no evidence to
16 justify any relief here and it's questionable whether the
17 court even has the power to order DISF, a nonparty, to do
18 anything.

19 Let me say one word about the serious
07:00AM 20 protective order issues raised by the plaintiffs. Your
21 Honor, my clients have sought in discovery to get
22 customer lists repeatedly and consistently since the
23 start. And the reason they want a customer list was so
24 that they could determine whether Mr. Blank was truthful
07:00AM 25 when he said that he disclosed that some of these

1 diamonds came from a disreputable grading lab. They
2 studiously and repeatedly avoided providing us that
3 information. In fact, we had to go to Judge Mazzant
4 twice to get that information from them; and even then
07:00AM 5 they only gave us 100 customer names from which we were
6 allowed to send subpoenas to 40. It's unfathomable to
7 think that DISF -- well, first of all, Mr. Manookian
8 submitted a declaration where he says as far as he knows
9 nothing that the DISF published came from discovery in
07:01AM 10 this case; and we certainly didn't give it to them. We
11 abided by the protective order.

12 The fact is they're saying we have it
13 and that -- the only way it's a violation of the
14 protective order is if it's defined as discovery
07:01AM 15 information. The protective order says discovery
16 information is information provided by them to us. We
17 didn't have it. They wouldn't give it to us. We had to
18 go to court to get it, and we only got it a couple of
19 weeks ago. The information they're complaining about was
07:01AM 20 up long before that. It, by definition, can't be a
21 violation of the protective order.

22 What's more, they don't have standing to argue
23 about it. You just heard the plaintiffs say they sold
24 that information to someone else. That someone else is a
07:01AM 25 client of Cummings Manookian today. Your Honor, there's

1 not even evidence that there was any violation of the
2 protective order.

3 I'm happy to address any of the court's
4 questions; but for all those reasons, your Honor, we
07:02AM 5 don't feel they've made a threshold holding. They
6 haven't filed a motion with sufficient evidence to even
7 justify an evidentiary hearing or anything of the sort.
8 We think instead they should take the deposition of DISF,
9 if they feel it's appropriate; and if appropriate, they
07:02AM 10 can seek injunctive relief against the right party in the
11 right forum. Thank you.

12 THE COURT: Mr. Johnston.

13 MR. JOHNSTON: I was in a trial one time when
14 I had a lawyer stand up and try to give a rebuttal
07:02AM 15 opening, but I know of no procedure for that. So, I will
16 call our first witness, Bruce Steckler.

17 MR. SCHWEGMANN: Your Honor, we'd like to --
18 I'm not sure the procedural mechanism that we're
19 operating in; but in any event, I'd like to invoke the
07:02AM 20 Rule.

21 THE COURT: Okay. If there are any other
22 witnesses that intend to take the stand in the courtroom,
23 if you'll please step outside the courtroom.

24 (Oath administered.)
25

DIRECT EXAMINATION OF BRUCE STECKLER

CALLED ON BEHALF OF THE PLAINTIFFS

BY MR. JOHNSTON:

Q. Mr. Steckler, I'm going to go kind of quickly
through just background stuff.

You're one of the attorneys for the plaintiff
in this case, correct?

A. Yes.

And by the way, Bruce Steckler, counsel for
the plaintiffs.

Q. I'm sorry. I didn't get the reference.

But let me direct you to this motion today and
just ask you for the background of this motion in
connection with your service as an attorney for the
plaintiff in this case.

A. Well, it's certainly not something I've ever filed
before in my career. It was something that took a lot of
consideration and research on before we filed it. In
fact, we discovered this information only in May of 2017.
That's when we first learned that Facebook posts were
being sent to people in the Dallas area in which the --
they were advertising a Diamond Integrity Standards
Foundation and a website *www.ddvictimfund.com*.

Q. Now, did that website have customer information on
it?

1 A. Yes, it did.

2 Q. And Mr. Schwegmann referred to the earlier
3 websites and you waiting 60 days before trial to file
4 this. Did the earlier websites have customer information
5 on them?

07:04AM

6 A. No, not that we're aware of. At least when we --
7 this is the first website that we learned that full
8 customer names were being disclosed, purchase prices were
9 being disclosed.

07:05AM

10 Q. And with regard to your efforts to not disclose
11 that customer information, let's lay that out a little
12 more clearly, too.

13 You did resist producing customer information,
14 correct?

07:05AM

15 A. Yes, and --

16 Q. And let me take it a step at a time.

17 And they filed a motion to compel, correct?

18 A. They did.

19 Q. And what did Judge Mazzant rule?

07:05AM

20 A. Judge Mazzant --

21 MR. SCHWEGMANN: Your Honor, objection. I
22 mean, his rulings are part of the record in the case; and
23 I don't know that it's appropriate for him to have
24 plaintiffs' counsel interpret it for you.

07:05AM

25 THE COURT: I'm going to let him answer.

1 A. There's a minute entry just recently, at the end
2 of June, by Judge Mazzant which basically allowed only a
3 snapshot, I believe, of 40 customer names be produced for
4 Attorneys' Eyes Only; and he even cautioned in there in
5 his minute entry order about the utilization of the names
6 by the parties.

07:06AM

7 BY MR. JOHNSTON:

8 Q. And was there also a prior protective order
9 entered allowing the designation of Attorneys' Eyes Only
10 back in October of 2016?

07:06AM

11 A. Yes. The court entered a protective order
12 designating things confidential, highly confidential, and
13 Attorneys' Eyes Only.

14 Q. And my memory may be inaccurate, but my memory is
15 he ordered you to produce 100 customers' names but they
16 got to subpoena 40 of the 100. Does that sound right?

07:06AM

17 A. That's exactly correct. We provided a list of 100
18 names; and then of the 100, 40 could then be subpoenaed
19 whereby additional information would be gathered,
20 including the depositions.

07:06AM

21 Q. So, when Mr. Schwegmann complains about you only
22 producing 100 names, that's what the court required,
23 correct?

24 A. That's correct. And in fact, for clarification,
25 we produced thousands of customer invoices and records in

07:07AM

1 the case. We had just redacted customer names,
2 addresses, and phone numbers in the production that we
3 did in response to discovery.

07:07AM

4 Q. Let's move now to -- well, has there been any
5 doubt about Mr. Blank's access to these documents in
6 connection with the plaintiffs' repeated demands that he
7 produce them?

07:07AM

8 A. Not at all. In fact, we did produce the 100 names
9 because we do have access to them; and we did consult
10 with the new owner of the company, Diamonds Direct,
11 before we produced them, explained to them we were
12 subject to court order, even though there is an asset
13 purchase agreement asking us to maintain the
14 confidentiality. Moreover, we received letters and we've
15 had conversations with Diamonds Direct indicating they
16 wanted to maintain --

07:07AM

17 MR. SCHWEGMANN: Objection, your Honor,
18 hearsay. He's talking about conversations with others
19 that aren't going to be here as witnesses today.

07:08AM

20 MR. JOHNSTON: Your Honor, I'll --

21 THE COURT: Sustained.

22 BY MR. JOHNSTON:

07:08AM

23 Q. Let me ask you, Mr. Schwegmann -- I'm sorry --
24 Mr. Steckler -- and I'll probably make that mistake more
25 than once.

1 A. I won't take offense.

2 Q. Do you recall the date in May of this year when
3 you learned about the first Diamond Integrity Standards
4 Foundation website?

07:08AM

5 A. Yes. It was on or about May 10th of this year.

6 Q. And I said in my opening that the websites have
7 been changed at various times. Would you describe for
8 the court what you have discovered in connection with
9 these websites since May of this year?

07:09AM

10 A. Personally and as counsel in the case, we have
11 been keeping track of the websites. The initial website
12 that we saw in May of 2017 had customer names, and it had
13 information about the purchase price. In addition, it
14 had a petition that you could file a lawsuit. In

07:09AM

15 essence, you could click on it and prepare a lawsuit; and
16 it provided a request for a declaration. I think you
17 have the website in front of you up online that we saw.
18 That's the first one. Now, there are times that on this
19 website, it's gone down. I believe right now you can't
20 access it. At other times we've either middle initial --
21 you know, first names redacted or just initials; but it's
22 been ever-changing. But the sum and substance of the
23 text seems to have remained the same.

07:09AM

24 Q. And with regard to what you're seeing on the
25 screen, the capture of that website, did you verify that

07:10AM

1 these are in fact customers with the dollar amounts of
2 their purchases?

3 A. Yes. When we first discovered this, that's one of
4 the first things we did was to -- first of all, we needed
5 to find out the source of the information.

6 Q. Well, let me just stay with that for a minute.

7 When you verified that there were customers'
8 names on the website, who did you contact?

9 A. Well, my first conversation, I -- let me see. I'm
10 not sure who we first contacted. I can tell you who we
11 did contact.

12 Q. Tell me who you did contact, then.

13 A. We first reached out to Diamonds Direct who was
14 part of the asset purchase agreement on November 1st.

15 Q. And why?

16 A. We wanted to see if they had produced or disclosed
17 that information to Mr. Manookian.

18 Q. And were you able to satisfy your concerns about
19 the source of the documents with a phone call to Diamonds
20 Direct?

21 A. I received not only a phone call from Diamonds
22 Direct but a letter and an e-mail confirming that no --

23 MR. SCHWEGMANN: Objection, your Honor,
24 hearsay.

25 A. I confirmed that it was not --

1 THE COURT: Sustained.

2 BY MR. JOHNSTON:

3 Q. By Diamonds Direct.

4 MR. SCHWEGMANN: Objection, hearsay.

07:11AM

5 BY MR. JOHNSTON:

6 Q. So, then, what did you do after you found out that
7 Diamonds Direct did not produce the customer information
8 contained on the victims' fund website?

07:11AM

9 MR. SCHWEGMANN: Your Honor, I'm sorry to
10 interrupt; and I understand this is a bench hearing. At
11 the same time, if you'll indulge my objections, I need to
12 protect the record.

07:11AM

13 Among other things, I don't believe I see a
14 representative from Diamonds Direct here to testify and
15 he's just gotten in two hearsay statements about that and
16 we'd ask the court, again for record purposes, just to
17 strike that from the record.

18 THE COURT: What question are you referring
19 to? I don't have the transcript up.

07:12AM

20 MR. SCHWEGMANN: I apologize for leaning. I
21 believe I'm not being loud enough.

22 Mr. Johnston asked Mr. Steckler twice about
23 conversations he had with the attorneys for Diamonds
24 Direct about the information that's at issue here.

07:12AM

25 Unless I'm incorrect, I don't see an attorney or anyone

1 from Diamonds Direct who owns the information who can
2 testify about that at all. So, we're left with taking
3 Mr. Steckler's hearsay as truth; and we don't believe
4 that's appropriate for this type of hearing. So, we
5 object on the basis of hearsay for the last two questions
6 and answers.

7 THE COURT: All right. I'm going to sustain
8 the objections. If y'all will give me a chance to make a
9 ruling on any objections made before the witness answers,
10 that will be helpful.

11 Okay.

12 BY MR. JOHNSTON:

13 Q. Did you contact counsel for the defendants in this
14 case, sir?

15 A. Yes, I did.

16 Q. And what was their response?

17 A. When first confronted with it, Mr. Schwegmann was
18 unaware of it, over a telephone call. Subsequently, I
19 asked him why we hadn't gotten any of this information in
20 the course of discovery and told him a little bit about
21 the work that we did once we found out about this
22 website.

23 Q. And did you ever get a satisfactory explanation
24 from them as to how -- well, what did you do to
25 investigate the origin of DISF?

1 A. The first thing we did is we went onto the
2 Tennessee Secretary of State's website and discovered
3 that this Diamond Integrity Standards Foundation was
4 incorporated by Brian Manookian and he and his law firm
07:14AM 5 was the registered agent. I did that before I called
6 Mr. Schwegmann. Obviously because the situation was so
7 serious, I wanted to make sure I knew who I was talking
8 about.

9 The second thing I did and -- but one of the
07:14AM 10 things we did, which I'm surprised today, is counsel for
11 the defendant was on e-mails with Diamonds Direct about
12 the production of these customer names and repeatedly
13 insisted that they didn't want them produced in e-mails,
14 in which both parties were on them because Diamonds
07:14AM 15 Direct has a stake in this. So, I wanted to include them
16 in my e-mails with counsel for defendants.

17 Q. Did counsel for defendant receive e-mails from
18 Diamonds Direct with regard to their position on this
19 customer list?

07:15AM 20 A. Yes. They were copied on I know one for certain,
21 because I was with Mr. Correa, in which counsel for
22 Diamonds Direct, Mickey Aberman, had sent to me and was
23 pretty unequivocal about their --

24 MR. SCHWEGMANN: Objection, hearsay again.

07:15AM 25 THE COURT: Sustained.

1 BY MR. JOHNSTON:

2 Q. With regard to the -- well, was -- did there come
3 a time when the victims' fund lawsuit was taken down?

4 A. Yes -- well --

07:15AM

5 Q. And by the way --

6 MR. JOHNSTON: Let me go back to the very
7 front of the website, Coyt, please.

8 BY MR. JOHNSTON:

07:15AM

9 Q. It refers to a Diamond Doctor Victims' Fund
10 administered by DISF and invites people to enroll or
11 contact them for assistance before it's too late,
12 correct?

13 A. Correct.

07:16AM

14 Q. Do you know of the source of any fund that's ever
15 been established for victims of Diamond Doctor?

16 A. I am unaware of any such fund.

17 Q. Is there any class action or settlement anywhere
18 where there has been a fund set aside to pay victims of
19 Diamond Doctor?

07:16AM

20 A. I am completely unaware of such a thing.

21 Q. And if you look at -- under the section "Defrauded
22 by Diamond Doctor" -- let me get over here where I can
23 read it -- where it says "If you received an invitation
24 to enroll in the Diamond Doctor Victim Fund, you are
25 likely one of the thousands of individuals defrauded by

07:16AM

1 Diamond Doctor through the sale of EGL-International and
2 in-house certified diamonds."

3 And then the second paragraph, "Following the
4 exposure of its fraudulent sale practices, Diamond Doctor
5 shut down its business."

07:16AM

6 Do you see that language?

7 A. I do.

8 Q. And then let me direct your attention in those two
9 paragraphs to the words in red.

07:17AM

10 A. The hyperlinks?

11 Q. Correct.

12 A. Yeah, those are hyperlinks, I believe; and those
13 click you to the Cummings Manookian website.

14 Q. Well, what happens if you click on those? Do you
15 know?

07:17AM

16 A. Yes. You go to a Cummings Manookian sponsored
17 website. It's I think *diamondlawsuit.com*.

18 Q. So, the Victim Fund lawsuit established by DISF,
19 incorporated by Mr. Manookian, has a hyperlink that takes
20 you to his law firm's website?

07:17AM

21 A. Yes, and back to DISF if you want it as well.

22 Q. Well, let's -- so, just so we're clear, this is
23 the DISF website directing you to Mr. Manookian's law
24 firm, correct? The website with the customer names

07:18AM

25 directs you to Mr. Manookian.

1 A. Correct.

2 Q. Let's look at it now going the other way. Let's
3 go to the Diamond Doctor -- the *diamondlawsuit.com* slash
4 Diamond Doctor website. Who established that website?

07:18AM

5 A. That is a Cummings Manookian website, as you can
6 see from the left-hand corner.

7 Q. That is in fact one of the websites that started
8 this lawsuit, correct?

9 A. Correct.

07:18AM

10 Q. So, if you click up there -- by the way, let's
11 just go through it.

12 It talks about was I sold an overgraded
13 diamond; it talks about how to contact them to file a
14 lawsuit and contact -- I mean, and assert a claim against
15 Mr. Blank and the Diamond Doctor, correct?

07:18AM

16 A. Correct.

17 Q. On this theory of the EGL diamond is fraudulent.

18 A. That's their theory.

19 Q. All right. Let me direct your attention to the
20 upper left-hand corner where the name of the law firm is.
21 And because the fund has been taken down, we have this on
22 a video as opposed to an actual presentation live at this
23 time. But let me direct your attention to what happens
24 if you click on the name of the Cummings Manookian law
25 firm up at the top.

07:19AM

07:19AM

1 (Video presentation.)

2 BY MR. JOHNSTON:

3 Q. So, what does that direct you to?

07:19AM

4 A. As I said, it -- the Cummings Manookian sponsored
5 website takes you to the Diamond Integrity Standards
6 Foundation website, www --

7 Q. Which contains what?

07:20AM

8 A. Diamond Victim Fund, which is this DISF website
9 that contains Diamond Doctor customer names and purchase
10 prices.

11 Q. So, wholly apart from DISF revealing the
12 customer's name, is it accurate to say that the law firm
13 is revealing them by directing people from their website
14 to the Victim Fund website?

07:20AM

15 A. Correct.

16 Q. Was that one of the concerns that you had that
17 caused the filing of this motion?

07:20AM

18 A. Absolutely. We have a protective order in place
19 and we've been fighting over the production of names and
20 prices and, yet, here they are in the possession and
21 control, it appears to us, of Mr. Manookian and his law
22 firm.

07:20AM

23 Q. Well, let's talk about the protective order just
24 for a minute. It is Document No. 128 entered
25 October 25th, 2016. Is there an "Attorneys' Eyes Only"

1 section?

2 MR. JOHNSTON: And I have a copy, your Honor,
3 if you'd like one, as opposed to pulling it up.

4 THE COURT: I think I may. Is it the
5 protective order entered October 25th, 2016?

6 MR. JOHNSTON: That's correct, your Honor.

7 THE COURT: Okay. I've got a copy. Thank
8 you.

9 Mr. Johnston, what -- is this -- is the
10 website that is currently on the screen, is that the law
11 firm's?

12 MR. JOHNSTON: That's the Victim Fund website.
13 The law firm website directed you to the Victim Fund
14 website, and the Victim Fund website had the customers'
15 names.

16 BY MR. JOHNSTON:

17 Q. Is there an Attorneys' Eyes Only provision that
18 you negotiated with opposing counsel in this case?

19 A. We had negotiated a protective order that contains
20 an Attorneys' Eyes Only provision, yes.

21 Q. What was the purpose, in your mind, of needing an
22 Attorneys' Eyes Only provision?

23 A. Based upon our research, defendants had, in other
24 litigation, disclosed privileged and protected

25 information. We were extremely concerned with giving

1 defendants access to this information because it would be
2 extrajudicially used and impact other people. So, we
3 wanted Attorneys' Eyes Only so it would remain in the
4 case and he could not use them adversely against clients
5 or some of the things that candidly we've ended up facing
6 in this situation.

07:22AM

7 Q. And when you refer to Mr. Manookian having
8 disclosed confidential information previously, are you
9 referring to the *Chase* case out of the Circuit Court of
10 Williamson County, Tennessee?

07:22AM

11 MR. SCHWEGMANN: Objection, your Honor. Lacks
12 foundation. No personal knowledge of that.

13 MR. JOHNSTON: I asked if that's what he was
14 referring to. I think he has personal knowledge of what
15 he was referring to.

07:22AM

16 THE COURT: Overruled.

17 A. Yes, we found the court order online in which the
18 court found him in contempt of court and having
19 violated --

07:23AM

20 MR. SCHWEGMANN: Objection, your Honor. The
21 document speaks for itself. He's interpreting again an
22 order of the court.

23 THE COURT: Overruled.

24 MR. JOHNSTON: We'll submit the order, your
25 Honor. We'll solve that problem that way, and I'll move

07:23AM

1 on.

2 BY MR. JOHNSTON:

3 Q. Now, did the issue of the propriety and the
4 sensitivity of this customer list come up again with
07:23AM 5 Judge Mazzant within the last few weeks?

6 A. Absolutely.

7 Q. Specifically June 27th when he held a telephonic
8 hearing?

9 A. Yes.

07:23AM 10 Q. And did -- have you seen the minute entry of Judge
11 Mazzant in which he -- as on -- at 11:02 a.m. on that
12 date in which he says, "The court noted that it is
13 subject to protective order and cautioned the parties"?

14 A. Yes.

07:23AM 15 Q. What did Judge Mazzant caution the parties?

16 A. He cautioned against the adverse use of these
17 customer names and the prices and utilizing them for any
18 other purpose than the limited purpose he ordered for the
19 40 people that could be subpoenaed. And, in fact, it
07:24AM 20 limited even to certain number of questions basically
21 that would be asked during these subpoenaed depositions.

22 Q. Were the 100 names that were ordered produced by
23 Judge Mazzant designated Attorneys' Eyes Only or just
24 confidential?

07:24AM 25 A. I believe it was Attorneys' Eyes Only.

1 Q. Let me direct your attention now to July the 7th.

2 THE COURT: Counsel, I've got a quick
3 question --

4 MR. JOHNSTON: Yes, your Honor.

07:24AM

5 THE COURT: -- that this witness may be able
6 to answer or you may be able to.

7 The names that are on the website, are those
8 the 100 names that were -- the plaintiff disclosed to
9 defendant?

07:25AM

10 MR. JOHNSTON: My knowledge is they are not,
11 your Honor; but let me ask the witness to be sure.

12 THE WITNESS: There are thousands of customer
13 names on the *ddvictimfund.com* website. Some of those
14 names also include the 100 names and the 40 names
15 selected. I can't tell you offhand the crossover. But
16 this is a -- this appears to be a customer list of those
17 people between 2010 and 2016.

07:25AM

18 BY MR. JOHNSTON:

19 Q. So, when we're looking at this customer list up
20 here, I gather it's way longer than what we're
21 demonstrating on the screen here in court today.

07:25AM

22 A. I don't know what a gigabyte is or all those --
23 you know, I don't understand all that stuff; but it's a
24 lot of gigabytes. I was told it took a long time to
25 download all of this information. And it's not just the

07:26AM

1 names but the icons on the right as well.

2 Q. Now, if you look at the website there where it
3 says "Enroll, complete your declaration," did you secure
4 a copy of the declaration that the DISF website was
5 asking customers to complete for them?

07:26AM

6 A. I did.

7 MR. JOHNSTON: May I approach, your Honor?

8 THE COURT: Yes.

9 MR. JOHNSTON: I will mark as Exhibit 1 for

07:27AM

10 this hearing a document that says "Declaration of Matan
11 Abehasira." And I am grateful this person is not in the
12 room to explain to me how I mispronounced their name.

13 BY MR. JOHNSTON:

14 Q. Where did you secure this document?

07:27AM

15 A. From the website. If you go to the entry of her
16 name and to the right of it if you click -- and I'm
17 sorry. This is not a very good screen. That says
18 "declaration"; and if you click on that, this is what
19 appears, this witness statement here.

07:27AM

20 Q. Do you know whether or not -- well, let me ask you
21 this: When you looked through the website, did you see
22 anything in there that explained to people the import of
23 signing an affidavit under penalties of perjury?

24 A. No.

07:28AM

25 Q. Were you able to see how many people completed

1 this form for the foundation?

2 A. No.

3 Q. Did you see any explanation of what would be done
4 with the form?

07:28AM

5 A. No.

6 Q. Now let's move to July 7, 2017, and the appearance
7 of the next website. It's what I have referred to as
8 shorthand as the "Tax Code website."

9 Tell us what the Tax Code website is about.

07:29AM

10 A. Let me see if I have a copy. It's hard to read on
11 here. But in essence --

12 Q. And just so we're clear, this is -- this was
13 discovered by your office when?

14 A. Well, on the same date I got an e-mail from --

07:29AM

15 Q. Oh, I said July 7. I'm told it's June 19, is the
16 date. So, I may have confused you with that.

17 A. Yeah. I kind of tried to write all this in some
18 chronological order to --

19 Q. Well, I apologize. Let me just lead you for a
20 moment.

07:29AM

21 Did you discover this website on or about
22 June 19 of this year?

23 A. Yes.

24 Q. All right. And what was your concern on behalf of
25 your client with regard to this website opened by the

07:29AM

1 DISF?

2 A. Well, No. 1 -- and it's not even playing -- it was
3 mocking my client.

4 Q. If it were played live -- let me ask it to be
5 played live.

6 (Video presentation.)

7 BY MR. JOHNSTON:

8 Q. So, what's the song that's playing while
9 Mr. Blank's head is bobbling there?

10 A. "Baby Did a Bad, Bad Thing."

11 Q. And in his right hand he appears to have what?

12 A. A stack of cash.

13 Q. And then in the left hand?

14 A. A handful of diamonds.

15 Q. Now, when Mr. Blank sold his company to Diamonds
16 Direct, did they do a sales tax audit investigation to
17 ensure that they were not buying any liability?

18 A. Of course.

19 Q. What does this website accuse Mr. Blank of?

20 A. It makes allegations of tax fraud.

21 Q. And specifically sales tax fraud?

22 A. Correct.

23 Q. And just under --

24 MR. JOHNSTON: If we can scroll up on it a
25 little.

1 And, your Honor, we have hard copies of these
2 we can mark and introduce for the court; but for now it's
3 on the -- online, I believe.

4 BY MR. JOHNSTON:

07:32AM 5 Q. Under the "Tax Code Felonies," there is a list --
6 well, let's go up a little further so we have the...

7 There's a reference to \$150,000 I believe --
8 or maybe it's even more than that and I'm not reading
9 right -- a failure to pay taxes to the state of Texas,

07:32AM 10 correct?

11 A. There's some allegation like that. Let me see
12 where you're pointing to exactly. I mean, the thing
13 speaks for itself.

14 Q. There, right under "Tax Code Felonies" there's
07:32AM 15 "failure to pay taxes."

16 A. It's -- it looks like it's a section of a code, of
17 a tax code that was violated.

18 Q. You're correct.

19 A. In the --

07:33AM 20 Q. The section sign looks like a dollar sign to older
21 eyes.

22 A. And the second paragraph is where you're seeing
23 some of those allegations.

24 Q. And then underneath the allegations there's a
07:33AM 25 sentence that says, "Scroll through our database of sales

1 tax fraud to see the transaction." And then what do you
2 find there?

3 A. Again these are the customer names and purchase
4 prices that were redacted in the course of our litigation
07:33AM 5 and in which we have an obligation to maintain as
6 confidential under the asset purchase agreement with
7 Diamonds Direct.

8 Q. And do you know how many customers' names are
9 listed here?

07:33AM 10 A. It's the answer "lots."

11 Q. Okay.

12 A. I didn't count --

13 Q. And in addition to the name, we've got the
14 customer's phone number and the price of their diamond,
07:34AM 15 correct?

16 A. Correct. Some of the phone number of course is
17 redacted out but it's got the purchase price and then it
18 has a click on for view of more information.

19 THE COURT: What is the additional information
07:34AM 20 under "view"? Is it the same for each customer?

21 MR. JOHNSTON: It's not -- well, the
22 additional information is the same. It has a section on
23 the date, the customer, their phone number, the price of
24 their purchase, and then sales tax paid; and then there
07:34AM 25 is a -- again a link to details that you can click on for

1 more details on that customer and the purchase.

2 And I have marked a hard copy of the printout
3 of the pages of the website as Exhibit 2 and would offer
4 it.

07:35AM

5 And if I haven't offered Exhibit 1, I would
6 offer it also.

7 THE COURT: Are there any objections to 1 or
8 2?

9 MR. SCHWEGMANN: No.

07:35AM

10 THE COURT: All right. They're both admitted.

11 BY MR. JOHNSTON:

12 Q. Now, have you studied through this website?

13 A. I have.

14 Q. Did you see anything in there where Mr. Manookian

07:35AM

15 found -- well, where the foundation advised these
16 customers that they are the ones responsible for the
17 payment of sales tax?

18 A. No.

19 Q. And how long -- do you know how long this website

07:35AM

20 was up?

21 A. I believe it may still be up. It goes up and
22 down, but I believe it's still up.

23 Q. Okay. And let me direct your attention now to
24 July the 7th, just a matter of days ago and after the

07:36AM

25 filing of this motion. Did you come to learn of yet a

1 third website?

2 A. Yes, I did.

3 Q. And what was the name of that website?

4 A. *Suedavidblank.com*.

07:36AM

5 MR. JOHNSTON: And I'll ask Mr. Johnston to
6 bring that up. But let me also inform the court I have
7 marked as Exhibit 3 a hard copy of a printout of that as
8 well, and I'll tender it.

9 BY MR. JOHNSTON:

07:36AM

10 Q. So, tell me about *suedavidblank.com*.

11 A. It's more of the same. It's very similar to the
12 Cummings Manookian law firm website and very similar to
13 the DISF website. In other words, you can see the same
14 images; the text is very similar and consistent

07:37AM

15 throughout. There's a pattern in the text and the font
16 and the list --

17 Q. Stop and let me just...

18 (Video presentation.)

19 BY MR. JOHNSTON:

07:37AM

20 Q. Now, so, did you also look into the link on these
21 websites on what is called the "admin," or the
22 administrator of these websites?

23 A. Yes.

24 Q. And what do you learn when you follow that lead?

07:38AM

25 A. It goes to Cummings Manookian.

1 Q. Do you see any similarity between the format, the
2 colors, the template used on these three websites and the
3 website that Mr. Manookian used for his own law firm?

4 A. Absolutely.

07:38AM

5 Q. Let me talk to you for a minute now about the
6 robo-calls.

7 By the way -- and I'm not sure which one it
8 is -- did you see on one of these websites -- I believe
9 it's *suedavidblank.com*, but did you see on one of these
10 foundation websites a place where it says "Click here if
11 you want to hear David Blank admit to the fraud in his
12 own words," or something to that effect?

07:38AM

13 A. Yes.

14 Q. Have you ever seen that link before?

07:39AM

15 A. Absolutely.

16 Q. Where did you see it before?

17 A. One of the Cummings Manookian websites.

18 Q. And when you clicked on that Cummings Manookian
19 link that says listen to David Blank in his own words,
20 what recording did you hear?

07:39AM

21 A. It was a recording that Mr. Manookian has been
22 posting between himself and David Blank on his website.

23 Q. And was this a recording in which they --

24 Mr. Blank and Mr. Manookian are discussing the

07:39AM

25 formulation of an attorney-client relationship?

1 MR. SCHWEGMANN: Objection, your Honor.

2 A. Yes.

3 THE COURT: What's the objection?

4 MR. SCHWEGMANN: Calls for a legal conclusion.

07:39AM

5 Whether the attorney-client relationship was formed or
6 not is the subject of this lawsuit in fact.

7 THE COURT: Overruled.

8 What was your answer?

9 THE WITNESS: Yes.

07:39AM

10 BY MR. JOHNSTON:

11 Q. Do you know of any way the foundation could have
12 received a tape recording that Mr. Manookian made as an
13 attorney when he was speaking to Mr. Blank about the
14 possible formation of an attorney-client relationship?

07:40AM

15 A. Two ways. One, he got it from Mr. Manookian or,
16 two, they somehow got it off of Mr. Manookian's website
17 and put it on this website.

07:40AM

18 Q. Let me talk to you a little bit now about what has
19 been done with some of the customer information that the
20 foundation has -- well, let me ask this: Have you ever
21 been able to discover where this customer information
22 came from, how it came into the hands of the foundation
23 incorporated by Mr. Manookian?

24 A. No.

07:40AM

25 Q. Let's talk about robo-calls now.

1 When did you discover --

2 A. That's not for a lack of effort.

3 Q. I accept that.

4 When did you discover that robo-calls were
07:40AM 5 being made to these customers?

6 A. It was sometime in June, around June 9th.

7 Q. Now, Mr. Manookian's --

8 (Audio presentation.)

9 BY MR. JOHNSTON:

07:41AM 10 Q. Is that a recording of one of the robo-calls that
11 was received by one of these customers?

12 MR. SCHWEGMANN: Objection, your Honor. I'd
13 ask for some more foundation of how he --

14 MR. JOHNSTON: That's fair. Let me do that,
07:42AM 15 your Honor.

16 BY MR. JOHNSTON:

17 Q. How did you come into possession of this
18 recording, sir?

19 A. People sent them to me. People that were aware
07:42AM 20 that I was handling the case sent them to me. I don't
21 recall as I sit here who sent me a call.

22 Q. Let me ask you this: Have you seen
23 Mr. Manookian's affidavit or declaration filed in
24 opposition to this motion today?

07:42AM 25 A. Yes.

1 Q. And in that does he admit that robo -- that DISF
2 made 175 robo-calls to customers of the Diamond Doctor?

3 A. I know that he made one hundred seventy -- he
4 claims to have made 175 calls. I --

07:42AM

5 MR. SCHWEGMANN: Your Honor --

6 A. I don't know whether he calls them robo-calls
7 like --

07:43AM

8 MR. SCHWEGMANN: I think, in fairness, if
9 Mr. Steckler looks at the affidavit, it says that DISF
10 made the calls, not Mr. Manookian sitting at this table.

11 MR. JOHNSTON: I think that was my question.

12 MR. SCHWEGMANN: Well, the answer said that I
13 think "he," meaning Mr. Manookian, made these calls.

07:43AM

14 THE COURT: I'll make this easy. I've got the
15 declaration in front of me and I'm looking at it so...

16 MR. JOHNSTON: Thank you, your Honor.

17 A. Paragraph 7, I believe.

18 BY MR. JOHNSTON:

07:43AM

19 Q. Is that -- did you receive complaints and concerns
20 from customers who received these robo-calls?

21 A. Diamond Doctor employees did, and that was --

22 MR. SCHWEGMANN: Your Honor, objection. Again
23 it's hearsay. None of these folks are here to testify,
24 and none of it has been disclosed to us before today.

07:44AM

25 THE WITNESS: That's not true. We produced

1 this actual -- this audio has been produced to you. In
2 fact, pretty close to the time that we received it, we
3 brought it to your attention. We also, I believe,
4 attached it to what we filed in the case and it's been in
5 your possession and that's part of the basis of your
6 response. I'm just trying to be clear.

07:44AM

7 MR. SCHWEGMANN: Fair enough. But, your
8 Honor, the question that I'm objecting to is "has anyone
9 complained" and he started giving a list providing
10 hearsay information about what those complaints are when
11 we haven't had a witness -- I mean, simple due process
12 requires we know the allegations against us particularly
13 on a show cause for sanctions hearing.

07:44AM

14 THE COURT: All right. I'm going to sustain
15 the objection.

07:44AM

16 However, you are allowed to answer, if you
17 know who has complained, but just who that is and not the
18 subject of the complaints.

19 THE WITNESS: Me. I complained to you when I
20 told you that customers of Diamond Doctor are getting
21 these calls and it was concerning me because I didn't
22 think it was appropriate. That's who complained.

07:45AM

23 BY MR. JOHNSTON:

24 Q. Have you also discovered that there have been
25 e-mails sent to the media announcing and directing them

07:45AM

1 to these three websites?

2 A. Yes.

3 Q. Who sent those e-mails?

4 A. Received an e-mail from Rob Bates who is a jewelry
07:45AM 5 industry reporter, whose name was brought up in the
6 deposition that we recently took, indicating that he had
7 gotten e-mails from this *info@disf.com* website.

8 Q. And with regard to Mr. Bates, how did his name
9 come up?

07:46AM 10 A. We took the deposition of a Mr. Hershovitz, and in
11 the deposition testimony his name was mentioned as
12 someone who had been threatened by Mr. Manookian.

13 MR. JOHNSTON: May I approach, your Honor?

14 THE COURT: Yes.

07:46AM 15 BY MR. JOHNSTON:

16 Q. Let me show you what I would mark as Exhibits 4
17 and 5.

18 Are those the e-mails related to Mr. Bates and
19 directing him to the three websites?

07:47AM 20 MR. SCHWEGMANN: Can we have copies, please?

21 MR. JOHNSTON: I'm getting them as fast as I
22 can, sir.

23 A. Yes.

24 MR. JOHNSTON: Your Honor, we would offer
07:47AM 25 Exhibits 4 and 5.

1 THE COURT: Do you have a copy for the court?

2 MR. JOHNSTON: I do.

3 MR. SCHWEGMANN: And I'll object to
4 foundation, authenticity, and hearsay. Foundation,
07:47AM 5 authenticity, and hearsay.

6 Your Honor, let me -- if I might, on
7 Exhibit 5, it looks to be an e-mail from
8 *info@diamondintegrity.org* to *info@diamondintegrity.org*
9 that Mr. Bates may have received. He's obviously not
07:48AM 10 here to testify that he in fact received it. There's
11 nothing on this page that indicates that it came from one
12 of my clients or any of the parties in this case. I
13 think their allegation is it came from DISF; and if
14 that's the case, DISF, as this court knows because I've
07:48AM 15 said it a number of times, isn't a party and can't
16 authenticate it. It also says: Please (indiscernible)
17 to defrauded consumers about these websites. This is
18 textbook hearsay involving nonparties, both the
19 recipients and the sender.

07:49AM 20 THE COURT: Mr. Johnston, do you have a
21 response?

22 MR. JOHNSTON: Your Honor, I think under the
23 circumstance of this case with regard to the behavior,
24 that the hearsay rule is a little different; and I think
07:49AM 25 they should be admitted to show, No. 1, the efforts of

1 Mr. Steckler to try to avoid this situation and, No. 2,
2 just what is going on out there in the Internet world
3 with regard to these websites.

07:49AM

4 MR. SCHWEGMANN: Well, your Honor, the problem
5 I have with that is this is an emergency show cause
6 hearing where they're asking the court to impose contempt
7 sanctions and perhaps others. And again, simple due
8 process requires that we have notice of what's being
9 alleged against us and us being the named defendants in
10 this case. They've attached to their motion a bunch of
11 unauthenticated hearsay, and now they're having a witness
12 who didn't even receive the documents testify to the
13 court about that.

07:50AM

14 THE COURT: All right. Well, I'm just going
15 to tell you I don't think it's proper to continue to act
16 like DISF is this standalone third party that's clearly
17 associated with your client. So, I'm going to sustain
18 the objection with regards to these two documents; but
19 I -- I don't think it's correct that DISF is a completely
20 unrelated, independent third party with regards to this
21 case.

07:50AM

07:51AM

22 MR. SCHWEGMANN: Fair enough, your Honor,
23 although they haven't put on any evidence about the
24 structure of DISF other than it was incorporated -- well,
25 we'll get to that. I'm sure they'll call Mr. Manookian

1 at some point.

2 BY MR. JOHNSTON:

3 Q. And, Mr. Steckler, let me ask you also if you're
4 aware in the declaration of Mr. Manookian that he has, on
07:51AM 5 behalf of DISF, admitted that DISF sent notices by e-mail
6 by the websites to media outlets?

7 A. Yes.

8 Q. And do you know why -- do you know how
9 Mr. Manookian has the knowledge to speak on behalf of
07:51AM 10 DISF about these matters if in fact he is divorced from
11 it?

12 A. That is the biggest concern.

13 Q. Have you to this day learned how Mr. Manookian and
14 DISF came into possession of these customer lists?

07:52AM 15 A. No.

16 Q. Has the order of the court to treat these as -- to
17 treat the documents you produced involving customers as
18 Attorneys' Eyes Only ever been lifted?

19 A. No.

07:52AM 20 Q. Has the court's order -- or rather the court's
21 cautioning to the parties of how customer lists and
22 customer information is to be dealt with in this lawsuit
23 ever been altered?

24 A. No.

07:52AM 25 Q. Let me direct your attention now to the discovery

1 process.

2 It is true, is it not, that the defendants
3 have made repeated demands upon your clients to produce
4 these discovery -- I'm sorry -- these customers lists?

07:52AM

5 A. Yes. They were the subject of a motion to compel.

6 Q. And we've talked about that previously.

7 Let me talk about your discovery efforts to
8 the defendants. Have you made discovery requests upon
9 the defendants that would encompass these customer

07:53AM

10 lists if they were in their possession, custody, or
11 control?

12 A. Yes. When we first discovered the website, the
13 first website that listed all the customer names, I
14 reached out to defendants' counsel and said, "We have
15 outstanding requests for production," listed for them
16 eventually the ones that were at issue and said, "Why has
17 this not been supplemented by your clients?" Because
18 they clearly asked for any information they have or they
19 may have posted on the websites, et cetera. I think we
20 listed maybe six active requests for production that we
21 thought this would be responsive to.

07:53AM

22 Q. And what was their response?

23 A. One, "We objected to it," of which I had
24 conversation saying there's continuing obligation; and
25 then two, "That's not us. We're not DISF. We can't

07:54AM

1 produce that."

2 Q. Has counsel for defendants at any time been
3 helpful to you in securing these customer lists in the
4 possession of DISF?

07:54AM

5 A. No.

6 Q. Have they been helpful to you in subpoenaing
7 Mr. Manookian to secure them from DISF?

8 A. No. In fact, that's --

07:54AM

9 Q. Well, let me just ask you. Describe for the court
10 the process of attempting to subpoena DISF in order to
11 get this information from them and find out how they got
12 it.

07:54AM

13 A. Well, as in any discovery dispute in this court, I
14 contacted defense counsel, advised them of the situation,
15 what I had found with the relationship with

07:55AM

16 Mr. Manookian, Cummings Manookian, DISF. I pointed out
17 the discovery issues. They told me it's not them. I
18 said, "Look, this is a little awkward because now you're
19 forcing me to reach out to your client who is the
20 registered agent and person that I would have to deal
21 with on this website. I'd like to coordinate the process
22 with you for subpoena. We can do them with the depositions or
23 somehow."

07:55AM

24 I was told, "We don't speak for DISF. We will
25 not do anything for DISF. That's not us. You're just

1 going to go through it I think the old-fashioned way or
2 standard way." There are a number of e-mails with
3 respect to that. And, so, I had to actually issue a
4 subpoena.

07:55AM

5 Q. And with regard to any communications that you
6 were going to have with DISF who is not their client,
7 what was the position of defense counsel?

07:56AM

8 A. They're not going to be involved in it, they're
9 not going to cooperate or help me in any way secure the
10 information with respect to DISF, especially when I
11 raised to them, look, there's some real concerns here
12 because we've got this protective order, this is your
13 client, he's the registered agent. I provided them with
14 the information we had gathered. "How is this going to
15 work?"

07:56AM

16 Their point was "It's not us. We don't
17 represent them. You're going to have to subpoena them."
18 So, we tried that.

07:56AM

19 Q. And let me direct your attention to -- well, let
20 me --

21 MR. JOHNSTON: May I approach again, your
22 Honor?

23 THE COURT: Yes.

24 BY MR. JOHNSTON:

07:56AM

25 Q. I gather these communications were primarily with

1 Mr. Correa?

2 A. Yes. The initial phone call was to Chris, lead
3 counsel, and me being lead counsel and it being a
4 discovery dispute. Subsequently it fell to Mr. Correa
5 after numerous discussions and issues were raised.

07:57AM

6 Q. And then on Exhibit 6 -- do you have that in front
7 of you?

8 A. Yes.

9 Q. Is that a communication between you and defense
10 counsel on this subject?

07:57AM

11 A. Yes.

12 MR. JOHNSTON: Offer Exhibit 6.

13 MR. SCHWEGMANN: No objection.

14 THE COURT: All right. It's admitted.

07:57AM

15 BY MR. JOHNSTON:

16 Q. In it Mr. Correa says to you, "Bruce, we do not
17 represent DISF and I do not know who to serve."

18 Did you receive that from him?

19 A. Yes.

07:57AM

20 Q. And discuss it with him?

21 A. Absolutely.

22 Q. What was your response to Mr. Correa saying he
23 does not know who to serve for DISF?

24 A. Astounded. I mean, I told him, "Your client is

07:57AM

25 the incorporator. His law firm who is also your client

1 is the registered agent. We've got discovery to do. We
2 need to coordinate this, and it involves some serious
3 issues."

07:58AM 4 He was unable to tell me what to do. We were
5 left with no choice but to try to figure out another way
6 to handle this without court intervention but to try to
7 subpoena the corporate rep of DISF.

8 Q. What was your concern about contacting
9 Mr. Manookian directly as the registered agent?

07:58AM 10 A. As the court is aware, Mr. Manookian tried to make
11 an appearance in the case as counsel on behalf of
12 himself. We had just recently gotten a ruling from the
13 court that he could not be counsel in the case. And part
14 of that also raised Attorneys' Eyes Only issues.

07:58AM 15 In addition, Mr. Manookian is represented by
16 counsel and now I'm put in that awkward situation -- as I
17 told Andres, "I'm now going to be communicating to
18 somebody who you represent in this case regarding these
19 issues." It puts me in a very awkward position as an
07:59AM 20 attorney, not to mention the ethical concerns that that
21 also can raise.

22 Q. Do you have in front of you Exhibit 7 now?

23 A. I do.

07:59AM 24 Q. And is that another communication between you and
25 Mr. Correa on this same subject?

1 A. Yes.

2 MR. JOHNSTON: Offer Exhibit 7.

3 MR. SCHWEGMANN: No objection.

4 THE COURT: It's admitted.

07:59AM

5 BY MR. JOHNSTON:

6 Q. Did Mr. Correa ever at any point in time indicate
7 that if there were any phone calls or communications with
8 Mr. Manookian concerning DISF, that he insisted on being
9 a party to those communications?

08:00AM

10 A. No, he never made that statement.

11 Q. Did you feel free to contact Mr. Manookian without
12 including Mr. Correa in the communication?

13 A. No.

14 Q. Do you now have Exhibit 8 in front of you, sir?

08:00AM

15 A. I do.

16 Q. Is this another communication in this ongoing
17 effort to secure the information from the foundation?

18 A. Yes.

19 MR. JOHNSTON: Offer Exhibit 8.

08:01AM

20 MR. SCHWEGMANN: No objection.

21 THE COURT: It's admitted.

22 MR. JOHNSTON: Your Honor, it's been pointed
23 out to me also that I failed to offer Exhibit 3 which is
24 I think the *suedavidblank.com* website. I would offer it
25 at this time.

08:01AM

1 MR. SCHWEGMANN: No objection.

2 THE COURT: It's admitted.

3 BY MR. JOHNSTON:

08:01AM

4 Q. So, what did you finally do to try to secure the
5 information that defendants say you should secure from
6 DISF?

7 A. Issue a subpoena, a unilateral subpoena.

8 Q. And what was the response to the subpoena?

08:01AM

9 A. We gave a courtesy copy to defense counsel the
10 date of issuance. We had trouble serving Mr. Manookian,
11 and then we found out that their office was closed for
12 maintenance for eight or nine days during the week.

13 Q. So, the law office of Mr. Manookian -- let me take
14 that chronologically.

08:02AM

15 First you issued a subpoena, correct?

16 A. Yes.

17 Q. And then you notified opposing counsel that you
18 had done so and would be serving their client
19 Mr. Manookian as the agent for the foundation, correct?

08:02AM

20 A. Yes.

21 Q. I have not placed in front of you, but I have
22 marked as Exhibit 9 a photocopy of a photograph of the --
23 do you have a copy of a photograph there? Do you know
24 which one I'm looking at?

08:02AM

25 A. Yes, I have it.

1 Q. Tell me what that is.

2 A. The process server explained to us that he
3 couldn't serve them because their building was closed. I
4 said -- for maintenance. I said, "Well, I don't really
08:03AM 5 understand." It's a freestanding -- it's not a -- my
6 understanding it's a freestanding home kind of like in
7 uptown where lawyers have offices. I said, "I'm not sure
8 what maintenance closes down -- what do you mean?"

9 And he sent us a picture explaining what was
08:03AM 10 posted on the door.

11 Q. So, he was unable to serve the subpoena on
12 Mr. Manookian because his office was closed for
13 maintenance for a week.

14 A. Correct.

11:58AM 15 Q. And, so, then did you attempt a second time?

16 A. Yes. We then had to do an amended subpoena, which
17 we tried to do as quickly as possible in light of the
18 holidays coming up and given where we were in the course
19 of the litigation. So, we sent an amended subpoena,
11:58AM 20 trying to get it out as soon as possible because we had
21 dates of availability, et cetera.

22 Q. And just so the court is aware, the case is set
23 for trial August I think 15th; is that correct?

24 A. Correct.

11:58AM 25 Q. And there are multiple depositions scheduled

1 between now and that date, correct?

2 A. Certainly with respect to the customers; and we
3 are trying to coordinate other witnesses in the case,
4 yes.

11:59AM

5 Q. And the judge has indicated that discovery can go
6 on late up to the time of trial but that that trial
7 setting is firm, correct?

8 A. That's my understanding.

11:59AM

9 Q. So, did you ultimately succeed in serving a
10 subpoena on Mr. Manookian as the registered agent for
11 DISF?

12 A. Yes, he was served.

13 Q. And what was the response of the subpoena you
14 served on him?

11:59AM

15 A. Mr. Manookian, as counsel for DISF, filed a motion
16 to quash and sought sanctions against us in the Middle
17 District of Tennessee.

18 Q. And what's the basis for seeking sanctions?

11:59AM

19 A. I'll have to look at that. I think it was the --
20 complaining that the amount of time he had to respond to
21 the subpoena, not -- and that had to do with apparently
22 the topics involved involved gathering a lot of
23 documents, I believe was something -- it was something to
24 that effect. In other words, we had put on there a

12:00PM

25 number of topics and those topics required him gathering

1 voluminous documents and there was inadequate time and
2 therefore he quashed it. I have it here in front of me,
3 to be more exact.

4 THE COURT: I've got -- I've seen --

12:00PM

5 THE WITNESS: Okay.

6 THE COURT: I've got a copy.

7 A. That's just the best of my recollection.

8 MR. JOHNSTON: Your Honor, if you have a copy,
9 I would like to mark the third-party Diamond Integrity
10 Standards Foundation Motion to Quash Out of District
11 Subpoena as Exhibit 10 and offer it.

12:00PM

12 MR. SCHWEGMANN: No objection.

13 THE COURT: All right. It's admitted.

14 BY MR. JOHNSTON:

12:00PM

15 Q. Did you ever receive information from defense
16 counsel that indicated they had communicated with their
17 client about your request for these documents in this
18 subpoena?

19 A. No, not that I'm aware of.

12:01PM

20 Q. With regard to the motion today, can you tell the
21 court what your concern is as it relates to three things:
22 These three DISF websites brought within a couple of
23 months of the trial setting; the robo-calls and e-mails
24 and personal calls of Mr. Manookian, is the second; and
25 as the third, the issues you have encountered in

12:01PM

1 connection with trying to find out how confidential
2 customer information is being posted on the website of
3 the foundation?

4 A. Let's start as counsel for Diamond Doctor. My
5 No. 1 concern is for my client. And this was more
6 guttural than anything else, but it's the absolute
7 mocking of my client that is truly disturbing.

8 Secondly what is disturbing is the court
9 process. This case has a long history. Mr. Blank has a
10 long history with this case. We came to the court for
11 relief. We trust the court, we trust the process, and we
12 have institutions and standards within this court system
13 and everything is turned on its head. We have
14 confidential customer names of which we are obligated to
15 maintain as confidential, my client list which we have
16 access to and which another party has access to that
17 somehow has been disclosed. We have customer names that
18 I've been told the customers, in repeated documents, are
19 important critical witnesses in this case; and they have
20 been called and contacted and poisoned with websites and
21 robo-calls and this information out there. I don't know
22 where these e-mails have been and gone. People in my
23 office get Facebook posts about this. So, I don't know
24 the extent and breadth of it and how far it goes.

25 Witnesses in this case who are jewelers who also have

1 similarly been victimized have gotten information about
2 these websites and who, you know, have been working with
3 us cooperatively and collaboratively, I don't know if
4 that's going to continue because of their fear as
5 witnesses.

12:04PM

6 MR. SCHWEGMANN: Your Honor, objection.

7 A. These are all --

8 MR. SCHWEGMANN: Your Honor, I'm sorry to
9 interrupt. It exceeds the scope of the question, No. 1;
10 but second, it's hearsay.

12:04PM

11 THE COURT: Overruled. He is testifying to
12 his own concerns.

13 A. And, I mean, that's -- I mean, that's the
14 threshold. Not to mention we have --

12:04PM

15 BY MR. JOHNSTON:

16 Q. Well, let me just stop you and move you to another
17 subject because that's the concern you have expressed for
18 your client as an attorney and officer of this court.

19 Do you have concerns that go beyond just this
20 case and Mr. Blank and his company?

12:04PM

21 A. Well, let me add one more thing, if you don't
22 mind.

23 Q. Okay.

24 A. Documents that have not been produced in this case
25 that we don't know where they came from that are

12:04PM

1 confidential are being used in this case but not being
2 produced to us.

3 Q. Tell me what you mean by that.

4 A. For example, we've had two incidences of -- one,
12:05PM 5 this Tax Fraud website. I'm getting an e-mail from
6 defense counsel "You need to be aware that" --

7 Q. Who with defense counsel?

8 A. Mr. Correa.

9 -- "that there are allegations of tax fraud
12:05PM 10 involved in this case." And I'm kind of like this is out
11 of the blue.

12 And then we discover on the same day the
13 website indicating allegations of tax fraud that are then
14 confirmed through this declaration where Mr. Manookian is
12:05PM 15 investigating tax fraud through documents that have not
16 been produced and yet posting allegations online and
17 threatening in sanctions -- it's --

18 Q. Let me stop you right there.

19 A. Yeah.

12:06PM 20 Q. (No audio.)

21 A. Okay.

22 Q. Okay. Is Exhibit 11 the document that you were
23 talking about where Mr. Correa starts making allegations
24 that are from the foundation with related to this tax
12:06PM 25 fraud -- sales tax fraud situation?

1 A. Yes.

2 Q. Are there any other examples where this division
3 between Mr. Manookian and his law firm and the foundation
4 appear to be not what they would tell you?

12:06PM

5 A. There was an issue raised of some sort of
6 fabrication of documents that was addressed by this
7 court; and clearly it appeared to us that somehow the
8 documents that have been posted -- the information posted
9 online and the underlying documents are being used to

12:07PM

10 somehow create an allegation of fabrication of documents,
11 which is really more explained by how documents are
12 printed and produced versus what actually occurred.

13 Q. And let me be sure because Judge Johnson wasn't
14 there for that hearing.

12:07PM

15 There was an allegation that the Diamond
16 Doctor had falsified or fabricated documents which was
17 presented to the court because the documents that were
18 produced to the defendants had language on them with
19 regard to diamond grading that in fact was not really on
20 the invoices that had been given to the customers,
21 correct?

12:07PM

22 A. Correct. It --

23 Q. And the reason that Diamond Doctor came forward
24 with as to why the documents produced had language that
25 in fact the original document did not have was what?

12:08PM

1 A. Well, it's like when you go to the supermarket and
2 the receipt prints out for you. They -- you know, on the
3 back you might have coupons or some language on there;
4 and that's what you contemporaneously print out. The
5 supermarket --- or Tom Thumb for me is -- they don't keep
6 a copy of the receipt. It's in their system. So, when
7 you go back to Tom Thumb and you say, "I need you to
8 print me a receipt," you know, you'll usually get it on
9 an *Excel* spreadsheet where you'll get the most recent
10 coupon or information that they -- like "Have a Happy
11 Easter" or "Have a Nice Day." So, it's going to be
12 different because they don't have a way to kind of go
13 back in time and recreate things.

14 So, somehow somewhere they were aware -- and I
15 don't know. They had gotten documents back in the day
16 and then we printed them out as best we could today
17 through this -- there's a system called -- I think it's
18 *Jewel Mate* that prints things out that we had to have a
19 full-blown hearing to sort of explain to the court why
20 there's such a disparity in the language on the receipts.

21 Q. Now, what's the connection to that to the
22 documents the foundation has, in your mind?

23 A. Well, I don't know what the foundation has. I
24 know what I've seen on the website of what they have.
25 What concerns me and as a practitioner is, first of all,

1 the allegation -- I've never had allegations like that
2 made against myself or -- I don't know about this whole
3 group but where does this come from and why and if there
4 is a disparity, why wasn't it shown to me, brought forth
5 in a timely manner so that we could sort of compare it
6 and explain it before we start ending up with sanctions.
7 And had we been produced the information in the common
8 course of discovery, those are the type of things that
9 can at least be addressed more candidly. Instead, you
10 feel like what else -- we don't know what else is out
11 there. It's a significant concern. I don't know what
12 else has been done with this information either for these
13 people.

14 Q. Right. And I interrupted you earlier.

15 Are there any other concerns that you have
16 that have caused the filing of this motion today, the
17 motion on which we are here today?

18 A. And I don't want to -- I don't want to impugn
19 anything or anybody. It's the process, the integrity of
20 the process. That's what is most concerning to me, and
21 that is the understanding that we're all going to be
22 playing by the same rules without the sort of
23 gamesmanship or non -- I mean, the thought of creating a
24 nonprofit as some sort of straw man to intimidate and
25 harass somebody in a case involving harassment and

1 extortion and what that does and the fact that we have
2 reached professional agreements and we have a process in
3 place, it undermines the whole system and it concerns me.
4 It concerns me for my client, how it impacts jurors, how
12:11PM 5 it impacts witnesses and -- I mean, he's come here to get
6 his day in court. It takes a lot for somebody to put
7 themselves out there in a case. It's not something
8 someone takes lightly. And whether he does it out of
9 fear or anything, he did it. But this is not what
12:11PM 10 somebody expects, especially in the parameters of the
11 system that we have in my practice especially in this
12 particular district which is so collegial and
13 collaborative in how we handle matters.

14 MR. JOHNSTON: Your Honor, I am told I did not
12:12PM 15 offer Exhibit 9 which was a photocopy of the photograph.
16 I would offer that.

17 MR. SCHWEGMANN: No objection.

18 THE COURT: It's admitted.

19 MR. JOHNSTON: And I did not offer Exhibit 11,
12:12PM 20 one of the e-mails. I offer that.

21 MR. SCHWEGMANN: No objection.

22 THE COURT: It's admitted.

23 MR. JOHNSTON: Pass the witness.
24
25

1 CROSS-EXAMINATION OF BRUCE STECKLER

2 BY MR. SCHWEGMANN:

3 Q. Good afternoon Mr. Steckler.

4 A. Hi, Chris.

12:12PM

5 Q. Let's see. I believe you testified you're
6 familiar with the protective order in this case, correct?

7 A. I am familiar with it.

8 Q. And that's Document No. 128 in the court's file?

9 A. Get a copy, and I'll confirm -- I trust your

12:12PM

10 representation, but I didn't have it right here.

11 Q. And I believe Mr. Johnston asked you some
12 questions about the provision related to Attorneys' Eyes
13 Only. I instead want to direct your attention to the
14 third sentence of the first paragraph. I assume you're
15 also familiar with that sentence?

12:13PM

16 A. Which one is it?

17 Q. The one that says: This protective order shall
18 govern all documents, interrogatory response, responses
19 to request for admission, et cetera, and all other
20 material and information produced, given, filed, or used
21 in the course of this action.

12:13PM

22 Do you see that, sir?

23 A. I do.

24 Q. Fair to say that you understand the protective --
25 well, I should say that collection of information is

12:13PM

1 referred to as "discovery material," capital D capital M.

2 Do you see that?

3 A. I'm sorry. Can you show me what you're looking
4 at?

12:13PM

5 Q. Sure. Same sentence.

6 THE COURT: Where are you looking in the
7 protective order?

8 BY MR. SCHWEGMANN:

12:14PM

9 Q. If you have Document 128 and you go to the second
10 page, it's -- in the paragraph set "Purpose and Scope."

11 Fair to say the protective order defines
12 discovery material as information produced, given, filed,
13 or otherwise used in the course of this action? Correct?

14 A. That is correct.

12:14PM

15 Q. All right. Now, I believe I heard you say that we
16 had a hearing in Judge Mazzant's court -- I guess it was
17 June 27th -- concerning the production of what we've I
18 guess generally referred to as "customer information."
19 Do you recall that?

12:14PM

20 A. Yes.

21 Q. And it's also fair to say that before June 27th of
22 this year your clients didn't produce any customer names
23 or other customer information during the course of this
24 litigation, fair?

12:14PM

25 A. No.

1 Q. You didn't produce customer names, correct?

2 A. That's true.

3 Q. And you didn't produce other customer identifying
4 information prior to June 27th, correct?

12:15PM 5 A. No -- yes, no customer identifying information.

6 Q. Okay. And you also testified that with respect to
7 all the websites that you're complaining about here
8 today, you discovered customer -- what you're calling
9 "customer information" on those websites prior to

12:15PM 10 June 27th, fair?

11 A. Yes, I did.

12 Q. Okay. Now, after June 27th you produced -- I
13 believe it was -- 100 customer -- or information
14 concerning 100 customers; is that correct?

12:15PM 15 A. After -- I'm trying to decide whether we
16 produced -- yeah, I think after -- wait. I don't know
17 whether it was before or after, but at some point he
18 ordered 40 could be deposed. I think we might have
19 produced the 100 earlier unredacted and asked that they
12:16PM 20 be maintained Attorneys' Eyes Only and then afterwards we
21 had a minute entry hearing in which the issue had to deal
22 with subpoenas or something, but I could be wrong. I
23 just --

24 Q. Sure. And I'm not trying to trick you. Just
12:16PM 25 to -- we had to fight to get the customer identifying

1 information. The reason we had to fight for it was
2 because your client, for whatever reason, didn't produce
3 it to us, fair? And didn't produce it to us in any form
4 or fashion before June 27th, right?

12:16PM

5 A. Well, I explained in all of our pleadings exactly
6 why we did not produce the --

7 Q. Sure. You had reasons you didn't want to produce
8 it; and Judge Mazzant ultimately said you've got to
9 produce some of it, right?

12:16PM

10 A. He asked -- he allowed a snapshot of customer
11 names to be produced, yes.

12 Q. And Judge Mazzant didn't make that order until
13 June 27th of this year, right?

14 A. That's correct.

12:16PM

15 Q. And you discovered customer identifying
16 information on these websites that you're complaining
17 about well before June 27th, in fact as early as May and
18 in some cases even earlier, correct?

19 A. No. I discovered the names being listed on the
20 website on May 10th. I then had to figure out who DISF
21 was, and then we had to figure out whether this was
22 somehow related to Diamonds Direct who has access to
23 them. Then I brought it to your attention, and then we
24 raised it in -- before Judge Mazzant in a hearing.

12:17PM

25 Q. Okay.

1 A. Then we filed this motion down the road once it
2 continued.

3 Q. Right.

12:17PM

4 THE COURT: I'm going to short-circuit this
5 because I think I'm already where you're trying to go --

6 MR. SCHWEGMANN: You got that point.

7 THE COURT: -- that you -- somehow your client
8 had customer information.

12:18PM

9 MR. SCHWEGMANN: Well, no, your Honor. I
10 don't think --

11 THE COURT: Your client had customer
12 information other than what has been provided by
13 plaintiff in this case.

12:18PM

14 MR. SCHWEGMANN: I'm not ready to concede that
15 Mr. Manookian had customer information at all, that was
16 in his possession, custody, and control. I will say that
17 these folks didn't produce to us customer information
18 until Judge Mazzant ordered him to do it and even then
19 only 100 names. So, to the extent this issue is a
20 protective order violation, we can't have violated a
21 protective order because --

12:18PM

22 THE COURT: I don't agree with that because
23 the protective order specifically says "or otherwise used
24 in the course of this action." So, I understand the
25 point you're trying to make, that it may not have been --

12:18PM

1 that information may not have been necessarily given to
2 your client or to whomever by plaintiff. However, it
3 clearly has been somehow used in the course of this
4 action.

12:19PM

5 MR. SCHWEGMANN: It has not, your Honor. It
6 has not. It has not -- none of that information, as far
7 as I know, has been marked as an exhibit in this matter
8 until today. As far as I know, it hasn't. And this is
9 against -- this is in a backdrop where DISF and Cummings
10 Manookian have their own investigations going on trying
11 to solicit clients to bring claims against this, their
12 own *Word* files. This, by the way, is information that
13 Judge Mazzant has already held is privileged that needed
14 to be disclosed.

12:19PM

15 But if what we're here arguing about today is
16 a protective order violation, then that's a Rule 37
17 motion or some other motion. But this is part of the
18 problem I have, your Honor, is I'm not sure -- I want to
19 hit the ball in front of me; but based on the motion that
20 is filed, I'm not sure what that ball is. And so, you
21 know, if what they're saying is, look, we violated the
22 protective order, right, the best defensive I have is no,
23 you never gave us that information and studiously avoided
24 giving us that information.

12:19PM

12:20PM

25 THE COURT: Well, what I see is both of you

1 are swinging and missing because there's no balls to hit
2 because you're playing games. I mean, there is
3 clearly -- they've got questions of how was this
4 information obtained and information specifically about
5 DISF that so far your clients have avoided answering.

12:20PM

6 MR. SCHWEGMANN: Your Honor, they -- if I -- I
7 know we have a witness on the stand and if you'll indulge
8 me, because I have no great desire to cross-examine
9 Mr. Steckler and I think I can answer just some of the
10 questions directly to you if we'll agree to that.

12:20PM

11 I guess let me -- let me start by saying this.
12 We -- if you go to Exhibit 6, which was admitted over no
13 objection, that was an e-mail dated May 23rd between my
14 partner Mr. Correa and Mr. Steckler. And on May 23rd
15 Mr. Correa very clearly said, "We don't represent" -- "my
16 law firm doesn't represent DISF." I can't change that
17 fact. I don't have authority to accept service of
18 subpoena that I -- for an entity that I don't represent.
19 But the key is -- and the court may have its feelings
20 about that, but I'm bound by my own professional duties
21 and what I have authority to do and what I don't have
22 authority to do. But in any event, that representation
23 was made on May 23rd.

12:21PM

12:21PM

24 And if the court looks down, this is the first
25 time that the plaintiffs say, "Wait a second. It looks

12:21PM

12:22PM

1 like there's customer information out there." If it's
2 within the possession, custody, and control of my
3 clients, it should be produced. Mr. Correa says, "It's
4 not in our possession, custody, and control and since we
5 don't represent DISF."

12:22PM

6 And my point, your Honor, is they didn't file
7 a motion to compel in May seeking that information where
8 we would know we're looking at Rule 37 and we can look at
9 the actual document request and we can look at the
10 objections and we can do this in a way that's proscribed
11 by the Federal Rules of Civil Procedure. They don't do
12 that. Instead -- and they knew on May 23rd.

12:22PM

13 If you go to Exhibit 8, June 16th, this is
14 another e-mail from my partner Mr. Correa saying, "Look,
15 we don't have authority to accept service of the
16 subpoena." But between May 23rd and June 16th, they
17 don't file a motion to compel nor do they serve -- make
18 any attempt to serve the subpoena. And we heard today
19 that Mr. Steckler knew exactly who the registered agent
20 for service of process was, Mr. Manookian.

12:22PM

12:23PM

21 If you look at Exhibit 7, this is a -- now
22 we're at June 27th. Another e-mail from Mr. Correa
23 saying as clear as possible, "Look, I told you before I
24 don't represent DISF. I told you before the information
25 is not within the possession, custody, and control of my

1 clients."

2 Again, between May 23rd and now we're in
3 June 27th, no motion to compel to get this information,
4 no motion -- no service of a subpoena on what they knew
12:23PM 5 was the registered agent.

6 Now, I want to be as cooperative as possible
7 as well; but it doesn't change the fact that I don't have
8 authority. I don't represent DISF, and I have been told
9 I can't accept service of that subpoena. They can do it
12:23PM 10 themselves.

11 Now let's get to the actual subpoena. When he
12 serves -- first of all, Mr. Manookian called the process
13 server once he learned about its issuance and accepted
14 service. He wasn't even tagged. He called him and said,
12:23PM 15 "I'll accept service." The problem was it set the
16 deposition for -- I think it was 72 hours after the date
17 he accepted service. And I think we'll all agree here
18 today that -- is it -- can I agree that we'll organize a
19 deposition or at least facilitate, however I can, of
12:24PM 20 DISF?

21 I think the problem is this motion is just
22 frankly procedurally improper. It doesn't specify any
23 relief. And what's more, every solution here can be
24 solved by discovery. We'll facilitate a -- to the best
12:24PM 25 that I can -- again, I still don't represent DISF; but I

1 will do my best to facilitate a deposition date for that.
2 I think we can get Mr. Manookian to stand and say the
3 same thing. He actually represents DISF and presumably
4 has authority to say that.

12:24PM

5 And with respect to these protective order
6 issues, to the extent there's any meat to them, we've
7 offered deposition dates for both Mr. Manookian and
8 Mr. Cummings. And I guess from my perspective, your
9 Honor, because I don't know what ball I'm hitting, which

12:24PM

10 I think just simple due process requires, it seems like
11 we ought to at least do that and if necessary we can
12 re-tee this up somewhere down the road if that's what's
13 required. But I honestly don't know how the court can
14 fashion an opinion. I don't even know what we're doing.

12:25PM

15 THE COURT: No, and I will be candid with you
16 that before this hearing started, my thought is what
17 needs to happen before any definitive rulings in terms of
18 relief on sanctions can be made is some discovery --

12:25PM

19 expedited discovery needs to happen; and if everyone can
20 leave here today in agreement that that's going to
21 happen. I do think there needs to be some agreement on
22 the part of Mr. Manookian in the interim at least while
23 this discovery is conducted there's not going to be any
24 additional contacts of witnesses made like what has been

12:25PM

25 happening and what is the subject of this motion.

1 MR. SCHWEGMANN: Well, I guess, your Honor, we
2 haven't heard the name of any particular witness that has
3 been contacted. A witness list --

12:26PM

4 THE COURT: He admitted to contacting 175
5 witnesses in this case.

12:26PM

6 MR. SCHWEGMANN: He didn't. DISF contacted
7 175 witnesses for its own purposes. And your Honor rolls
8 its eyes, but you have to understand they're not the same
9 entity. And we filed, your Honor, our witness list this
10 morning; and there's -- for the trial that starts on
11 October 14th. And that's what we're going to be bound
12 by, and there's no proof that any of those witnesses on
13 that witness list that we're going to be bound by have
14 been contacted and certainly not by these gentlemen.

12:26PM

15 And, so, it -- and, your Honor, even -- I
16 guess two other points. Even if the court feels they
17 were contacted, there's no proof they were intimidated,
18 that they were threatened, that they were persuaded not
19 to testify. There's no proof of any of that. And what's
20 more, in Texas, as this court likely knows, the parties
21 have an absolute right to contact witnesses and --

12:27PM

22 THE COURT: They have a right to contact
23 witnesses and investigate, but what was stated on the
24 calls is not -- was not a neutral investigation type of
25 question.

12:27PM

1 MR. SCHWEGMANN: Well, if it was the call that
2 you're referring to here, it was "You may have been
3 defrauded by the Diamond Doctor. Call if you want more
4 information." That wasn't -- it was a one-way call.

12:27PM

5 There wasn't any sort of -- you've heard it yourself.
6 There was no sort of intimidation or threatening. It was
7 you, a customer of the Diamond Doctor, may have been
8 defrauded. Call me. And there's no proof any of them in
9 fact did that. Instead, it sounds like what they did was
10 contact Bruce Steckler so that he could complain about it
11 here today.

12:27PM

12 In any event, there's no evidence that that
13 was intimidating. It's certainly not witness
14 intimidation within the meaning of any of the cases that
15 are cited. So, with respect that -- I can't see any
16 basis of relief on that front.

12:28PM

17 With respect to the websites themselves, first
18 of all, as I said at the outset, I'm not sure the court
19 even has jurisdiction over the DISF websites; but what's
20 more, there's this Fifth Circuit case right on point that
21 says they might not like the websites, this court might
22 find the websites distasteful, just like the lower court
23 did in the *Marceaux* case. But the Fifth Circuit says too
24 bad. The Fifth Circuit says that's what the First

12:28PM

12:28PM

25 Amendment protects in that there's a -- that if the court

1 is going to analyze that issue, it's got to be done under
2 the prior restraint doctrine which neither party briefed,
3 which gets back to my original point. I don't know the
4 ball I'm trying to hit here today. And again, I think
5 simple due process requires it. And I'm perfectly happy
6 to facilitate the best I can; and if the court wants to
7 hear from Mr. Manookian, that's fine.

12:28PM

8 But in terms of me defending these defendants
9 in this action right now, I think I should be told what
10 I'm fighting about. If it's a motion for sanctions under
11 Rule 37 because I didn't produce some documents, let's
12 brief that and I'll respond to that. If it's take the
13 websites down that I don't control, then I want to have
14 my right to say they're protected by the First Amendment
15 and see what evidence they have that any jurors even saw
16 any of these websites. And I certainly want to argue
17 that Mr. Blank put up his own attack websites that were
18 out there for at least as long and only recently came
19 down and I suspect only because they wanted to make this
20 argument to this court today.

12:29PM

12:29PM

12:29PM

21 How does the court wish to proceed?

22 THE COURT: If you want to finish -- if you've
23 got any other questions that you want to ask of this
24 witness, why don't you go ahead and do that while he's up
25 on the stand. If you don't, then that's fine.

12:29PM

1 MR. SCHWEGMANN: You know what? I'll pass the
2 witness.

3 THE COURT: All right. Mr. Johnston, do you
4 have any other questions?

12:30PM 5 MR. JOHNSTON: If I may briefly, your Honor.

6 REDIRECT EXAMINATION OF BRUCE STECKLER

7 BY MR. JOHNSTON:

8 Q. With regard to the allegation that Mr. Blank's
9 attack website was only taken down recently, is that a
10 true statement?
12:30PM

11 A. No, it's not.

12 Q. How long ago was his attack website taken down?
13 If I may use that phrase.

14 A. Probably when I got involved in the case.

12:30PM 15 Q. When did you get involved?

16 A. I don't know exactly. It was definitely -- I
17 believe it was last summer. I don't even remember. It's
18 been a roller coaster.

19 Q. Let me ask you just a series of questions that I
20 may take a moment to formulate related to Mr. Manookian's
21 legal ethics and the roles he's playing.
12:31PM

22 He's a defendant in this lawsuit, correct?

23 A. Yes.

24 Q. And as a defendant in this lawsuit is subject to
25 Judge Mazzant's rulings with regard to the cautious
12:31PM

1 treatment of customer information, correct?

2 A. Correct.

3 Q. And he's an attorney for a foundation that has
4 published widely the customer information that Judge
5 Mazzant told him as a party he could not --

12:31PM

6 MR. SCHWEGMANN: Objection, your Honor.
7 That's not what Judge Mazzant held. I mean, he's
8 mischaracterizing the court's order.

9 BY MR. JOHNSTON:

12:31PM

10 Q. And third --

11 THE COURT: Hold on just a second.

12 MR. JOHNSTON: I'm sorry, your Honor.

13 THE COURT: What is the mischaracterization?

14 MR. SCHWEGMANN: The mischaracterization is

12:32PM

15 this idea that Judge Mazzant ordered my client to protect
16 customer information generally when in fact he said --
17 and I'm looking for the order now -- it's certainly part
18 of the court's record, but what Judge Mazzant said is the
19 information that's being produced by you to us is subject
20 to this protective order.

12:32PM

21 MR. JOHNSTON: Well, so that I am clear, your
22 Honor, I am referring to the minute entry of June 27,
23 2017, by Judge Mazzant in response to the telephone
24 conference where he says he warned the parties or
25 cautioned the parties about this information.

12:32PM

1 MR. SCHWEGMANN: Right. The information that
2 is "this information" is the information that Judge
3 Mazzant ordered them to produce to us, specifically the
4 hundred customer names. He wasn't saying, "Look, I think
5 any sort of customer information, however obtained, is --
6 falls within the scope of this protective order." That
7 wasn't briefed. That wasn't before him.

12:32PM

8 What he was saying was "I'm going to grant
9 this motion. I think customer information is relevant
10 and it should be produced." And that's what he did. And
11 in doing so, he said, "Listen, I'm going to watch it
12 because I think this is -- this specific hundred names
13 being produced is confidential." And, your Honor, if you
14 think about it in context, these guys have been
15 soliciting clients for years, since October, 2015; and
16 they themselves give their own customer information to
17 these folks.

12:33PM

12:33PM

18 THE COURT: Okay. I'm with you. The
19 objection is sustained.

12:33PM

20 Mr. Johnston, please rephrase your question.

21 MR. JOHNSTON: Thank you.

22 BY MR. JOHNSTON:

23 Q. So, in term of the hat that Mr. Manookian is
24 wearing, he's a party in this lawsuit bound by Judge
25 Mazzant's cautionary words with regard to the use of

12:33PM

1 customer names that he ordered you to produce, correct?

2 A. Correct.

3 Q. And in response to a request that you produce
4 thousands of customer names, Judge Mazzant said, "No, I'm
5 only going to allow you access to 100 of them," correct?

6 A. Correct.

7 Q. And even that 100 he said he wanted treated
8 cautiously, correct?

9 A. Correct.

10 Q. And then the second hat he wears is he's an
11 attorney for a foundation that apparently has this
12 customer list and has on three occasions posted it on the
13 website with accusatory accusations against Mr. Blank,
14 correct?

15 A. Correct.

16 Q. And then thirdly, he is the attorney for Diamonds
17 Direct which presumably owns the list and doesn't want it
18 produced, correct?

19 MR. SCHWEGMANN: Objection, your Honor.

20 That's the same hearsay statement he tried to get in
21 earlier about what Diamonds Direct wants or doesn't want.
22 They're not here to testify about that.

23 THE COURT: Sustained.

24 MR. JOHNSTON: Pass the witness.

25 THE COURT: Do you have any questions?

1 RE CROSS-EXAMINATION OF BRUCE STECKLER

2 BY MR. SCHWEGMANN:

3 Q. Just so we have a -- I think this is established,
4 but just so that it's clear on the record. It's fair to
5 say that the Diamond Doctor doesn't own any of this
6 customer information sitting here today, fair?

7 MR. JOHNSTON: Objection, asked and answered.

8 THE COURT: I know what the answer is; but if
9 you want to answer again, you can.

10 A. The assets which is the customer information were
11 sold. The Diamond Doctor's obligation and his access to
12 the information is to protect it.

13 BY MR. SCHWEGMANN:

14 Q. And Diamonds Direct owns that customer information
15 today, correct?

16 A. That's correct.

17 Q. And Diamonds Direct isn't here today as --
18 participating in today's hearing, correct?

19 A. That is correct.

20 Q. Thank you.

21 THE COURT: All right. You may step down,
22 sir. Thank you.

23 Mr. Johnston, do you have any other witnesses?

24 MR. JOHNSTON: May I have a moment to confer,
25 please?

1 THE COURT: Yes.

2 MR. SCHWEGMANN: While they are conferring, to
3 further complicate matters, your Honor, my client is
4 getting married this week on Saturday. His rehearsal
12:36PM 5 dinner is on Friday, and I think they've got events
6 tomorrow. The reason I say that is he's got to leave
7 tonight or I think he'll be in big trouble with his
8 fiancée and I -- we can talk about how this needs to
9 continue, but I need to at least say they've got to leave
12:36PM 10 at 5:00, with the court's permission, of course.

11 THE COURT: Are you asking, or are you
12 telling?

13 MR. SCHWEGMANN: I'm certainly asking.

14 THE COURT: All right. I think we can be done
12:36PM 15 by 5:00.

16 MR. STECKLER: Your Honor, Bruce Steckler for
17 the plaintiffs. We would like to call Mr. Manookian to
18 the stand, please.

19 (Oath administered.)

12:37PM 20 DIRECT EXAMINATION OF BRIAN MANOOKIAN

21 CALLED ON BEHALF OF THE PLAINTIFFS

22 BY MR. STECKLER:

23 Q. Can you please state your name for the record?

24 A. Brian Manookian, B-R-I-A-N M-A-N-O-O-K-I-A-N.

12:37PM 25 Q. You're a partner in the law firm of Cummings

1 Manookian in Nashville, Tennessee, correct?

2 A. Yes.

3 Q. And you and your law firm are defendants in the
4 lawsuit in which you are giving testimony today, correct?

12:37PM

5 A. Yes.

6 Q. And you're an attorney that's licensed in the
7 state of Tennessee; is that right?

8 A. Yes.

12:37PM

9 Q. I take it you're familiar with the disciplinary
10 rules of professional responsibility in Tennessee, right?

11 A. Generally, yes.

12 Q. And you have read plaintiffs' latest complaint in
13 this case, and I take it you're familiar with our
14 allegations; isn't that true?

12:37PM

15 A. I've read all of the complaints that have been
16 filed in all the different districts and different courts
17 and different forums through amendments. So, yes, I'm
18 positive I've read the latest one at some point and I'm
19 generally aware of the allegations in them.

12:38PM

20 Q. You're aware that the allegations in the case here
21 today involve you and your law firm's conduct towards
22 other jewelers. You're aware of that, right?

23 A. I'm aware that there are allegations about
24 interactions with other jewelers. There are no claims by
25 other jewelers.

12:38PM

1 Q. You're aware that we've made allegations against
2 you that you and your law firm put up negative ads,
3 negative websites, untruthful websites in an effort to
4 extort jewelers. You're aware of that, correct?

12:39PM

5 A. Yes. Yes, I'm aware that those are the
6 allegations that have been made.

7 Q. And, in fact, you and your law firm own websites
8 such as *www.solomonbrotherslawsuit.com*, correct?

9 A. No.

12:39PM

10 Q. You don't own that anymore?

11 A. I've never owned that.

12 Q. You've never owned that.

13 A. Yes.

12:39PM

14 Q. And you've never owned *www.mervislawsuit.com*. Is
15 that your testimony, too?

16 A. That is my testimony. You asked if I or my law
17 firm owned it. I'm testifying on behalf of Brian
18 Manookian right now, and I don't own any of those. If
19 you're asking about my law firm, I don't know if the
20 domain is owned by the law firm.

12:39PM

21 Q. I understand. Did you or your law firm ever own
22 the websites *www.solomonbrotherslawsuit.com* or
23 *www.mervislawsuit.com* at any point in time?

12:39PM

24 A. I know that we've owned *mervislawsuit.com* at some
25 point in time. I'm not sure about Solomon Brothers.

1 Q. You didn't put up a negative lawsuit *[sic]* against
2 Solomon Brothers, sir? Is that your testimony?

3 You or your law firm never put up a negative
4 website against them? Is that your testimony?

12:40PM

5 A. Is the question a negative lawsuit or a negative
6 website?

7 Q. Negative website.

12:40PM

8 A. My recollection is that we put up a website
9 soliciting consumers to bring claims against Solomon
10 Brothers at some point, yes.

11 Q. And you're aware that they felt forced -- are you
12 aware that they felt forced to hire you to stop those
13 negative lawsuits? Are you aware of that?

12:40PM

14 MR. SCHWEGMANN: Your Honor, relevance. He's
15 trying the case during today's hearing.

16 MR. STECKLER: No, I'm trying to lay a
17 foundation of the allegations --

18 THE COURT: Overruled.

19 A. No, I'm not aware of that.

12:40PM

20 BY MR. STECKLER:

21 Q. No one has told you that?

22 A. No.

23 Q. Okay. You have your own website, the Cummings
24 Manookian law firm website, correct?

12:40PM

25 A. We have a firm website at *cmtriallawyers.com*, yes.

1 Q. And on that website you say, "If you are like most
2 Americans, you treat people right and play by the rules."
3 It's in bold and all caps. Isn't that on your website?

4 A. Yes, sir.

12:41PM

5 Q. Do you believe in that?

6 A. Yes, I do.

7 Q. And you're familiar with the protective order in
8 this case?

9 A. Yes.

12:41PM

10 Q. Okay. And the protective order has a Section 1
11 that talks about "Purpose and Scope." Are you familiar
12 with that at all, or do I need to show it to you?

13 A. I'd like to see it if we're going to discuss it.

14 MR. STECKLER: May I approach?

12:41PM

15 THE COURT: Yes.

16 BY MR. STECKLER:

17 Q. If you'd turn under the "Purpose and Scope," which
18 is the second page.

19 If you read the third line, it says, "This
20 protective order shall govern all documents."

12:42PM

21 Do you see that?

22 Do you see that where it says that in the
23 third line?

24 A. No. I see the sentence in its entirety that says,
25 "This protective order shall govern all documents,

12:42PM

1 whether in writing, in electronically readable form, or
2 otherwise, interrogatory responses, responses to requests
3 for admission, responses to requests for production,
4 deposition testimony, and all other material and
5 information produced, given, filed, or otherwise used in
6 the course of this action or required by court order,
7 local rules, or the Federal Rules of Civil Procedure,
8 collectively 'discovery material.'"

12:42PM

9 Q. Thank you. Do you see the "or otherwise used in
10 the course of this action"? Do you see that?

12:43PM

11 A. I do.

12 Q. Okay. Is it your testimony that the customer
13 information contained in the DISF website was never used
14 in the course of this action?

12:43PM

15 A. No, it's not been used in the course of this
16 action. It's not been filed. It's not been made an
17 exhibit. It's never been produced. If you turn to the
18 first page of the protective order under where "The court
19 hereby orders and adjudges as follows," what's ordered
20 and what's governed are the production and exchange of
21 all documents, testimony, interrogatories, and other
22 information produced, given, or exchanged by and among
23 the parties.

12:43PM

24 No, that customer information has never been
25 produced in this action or used in this action.

12:43PM

1 Q. So, my question to you was: Has it been used in
2 this action at all?

3 A. And I guess I'd ask you to be more specific.

4 Q. No, I --

12:44PM

5 A. Are you asking about all of the customer names
6 that encompass all of the things that have been posted by
7 DISF?

12:44PM

8 Q. I'm asking whether any of the information on the
9 DISF voluminous websites that you've put up or have -- or
10 DISF has put up, has that information ever been used in
11 this lawsuit?

12 A. Not that I'm aware of.

13 Q. Okay. Can you take a look at the e-mail that was
14 offered into evidence by Mr. Correa?

12:44PM

15 Let me see what the date of that is. I
16 apologize.

17 It's dated June 19th, 2017. It's Exhibit 11.
18 Can you read the second paragraph?

12:45PM

19 MR. SCHWEGMANN: I don't know if he has a
20 copy, Bruce.

21 MR. STECKLER: Oh, I'm sorry. I thought we
22 left them up there.

23 THE COURT: Yes. Yes, I do.

24 BY MR. STECKLER:

12:45PM

25 Q. Can you read the second paragraph out loud,

1 please, from your lawyer Mr. Correa?

2 A. "As I explained, our client has identified
3 approximately \$57 million in in-state sales by Diamond
4 Doctor with respect to which no sales tax were paid. I
12:46PM 5 explained that we may need to raise this issue in this
6 case likely in connection with our dispute over the
7 production of customer names (it seems to explain Diamond
8 Doctor's persistent objections to disclosure of any
9 customers), and also because it may constitute evidence
12:46PM 10 of fraud by Diamond Doctor (thus supporting defendants'
11 truth defense to Diamond Doctor's defamation claims). We
12 may also need to raise this issue in connection our
13 request for sanctions as it may help explain why Diamond
14 Doctor may have had, but ultimately destroyed, original
12:46PM 15 invoices for its diamond sale transactions."

16 Q. Let me stop you right there.

17 How did you discover \$57 million in in-state
18 sales by Diamond Doctor in which no sales taxes were
19 paid? How were you able to do that with redacted
12:46PM 20 information that was produced in the course of this
21 litigation as Attorneys' Eyes Only? How did you do this?

22 A. This information is all available on
23 *ddtaxfraud.com*.

24 Q. So, you got -- the information that you found
12:47PM 25 about the tax fraud you got from *ddtaxfraud.com*'s

1 website, right?

2 A. I got it from the DISF. That's where we learned
3 that Diamond Doctor over a multiyear period was
4 committing a massive, systemic sales tax fraud where
5 customers would come in in-state and rather than charge
6 them sales tax, they would create phony shipping charges
7 and claim that items were sent out of state to in-state
8 customers so that no sales tax was collected, charged, or
9 remitted to the state.

10 Q. And, so, you got that information from your client
11 DISF's website in which you are the administrator; is
12 that right?

13 A. I'm not the administrator of that site, no. So --
14 I can answer that compound question if you break it down.

15 Q. Let's break it down because I think that's really
16 important.

17 So, you got information about this sales tax
18 fraud from DISF, correct?

19 A. In part. We also got it from the customers that
20 have contacted us in the last year and a half that we
21 have been soliciting for clients against Diamond Doctor.
22 It was fairly consistent that what he would do in order
23 to undercut competition and essentially offer an illegal
24 discount, he would ask people "What is your budget for an
25 engagement ring?" And if they said \$10,000, he would

1 allow them to put the entire \$10,000 towards a ring and
2 not charge sales tax, thereby giving them essentially
3 8 and a half percent more purchasing power at the expense
4 of the state and something that he could put in his
5 pocket as well. So, that's something that we saw pretty
6 quickly and --

7 Q. Who is "we"? Who is "we"?

8 A. Myself and Cummings Manookian.

9 Q. Okay. And "we" is doing this investigation with
10 information that we got from DISF; is that right? Yes or
11 no?

12 A. In part.

13 Q. Okay.

14 A. We were aware of --

15 Q. Let me stop you. In part. I appreciate that.

16 And the other part of information you got was
17 contacting customers of Diamond Doctor, correct?

18 A. No, sir. Customers of Diamond Doctor would
19 contact us --

20 Q. Well, hold on. Hold on.

21 You in your declaration indicated that you
22 left voice messages for 175 people, or is that DISF?

23 A. I did not leave voice mails for 175 people.

24 Q. Who did? Who did?

25 A. DISF.

1 Q. Okay. You just contacted three customers,
2 correct?

3 A. Correct, before --

4 Q. Okay. Hold on. I'm going to ask the questions.
5 You can explain yourself when your attorney asks you.

12:49PM

6 And the customers you contacted also happened
7 to be witnesses in this case, correct?

8 A. Happen to be witnesses in this case?

9 Q. Yes.

12:50PM

10 A. I don't believe they have been identified as
11 witnesses in this case by anyone.

12 Q. All right. Well, let me hand you the motion to
13 compel.

14 Have you seen the motion to compel in this
15 case?

12:50PM

16 A. I try to read most of the pleadings in this case,
17 but if you have a copy of it --

18 Q. I'm just asking you if you've read it.

19 A. I don't recall if I've read it or not --

12:50PM

20 Q. Okay.

21 A. -- Mr. Steckler.

22 MR. STECKLER: Your Honor, do you need a copy?

23 THE COURT: I have a copy. Thank you.

24 MR. STECKLER: Okay. May I approach?

12:50PM

25 THE COURT: Yes.

1 BY MR. STECKLER:

2 Q. Please turn to page 10. I would like you to read
3 the last sentence of -- under No. 3. Just read that last
4 sentence. On page 10.

12:51PM

5 A. "Diamond Doctor customers are therefore the only
6 witnesses who can provide what is unquestionably relevant
7 information."

8 Q. Okay. And you contacted three customers, right?

9 Did you contact three customers? Yes or no?

12:51PM

10 MR. SCHWEGMANN: The next question is --

11 MR. STECKLER: Excuse me. I'm asking the
12 questions.

13 BY MR. STECKLER:

14 Q. Did you contact three customers, sir; or did

12:51PM

15 you --

16 A. I contacted --

17 Q. Answer. Answer the question.

18 THE COURT: Okay. One at a time, please.

19 MR. STECKLER: Thank you.

12:51PM

20 THE COURT: Please answer the question.

21 A. I contacted three customers who had purchased --

22 BY MR. STECKLER:

23 Q. Thank you.

24 A. -- GIA diamonds --

12:51PM

25 Q. Thank you. I'm asking you -- excuse me. I asked

1 you one question.

2 THE COURT: Sir, you need to answer the
3 question; and if you need to explain something else
4 further, your counsel, when he gets to ask you questions,
5 will allow you to do that.

12:52PM

6 THE WITNESS: Thank you.

7 BY MR. STECKLER:

8 Q. So, you contacted three customers who, according
9 to this motion filed by your counsel, would be witnesses,
10 correct? Is that correct? Yes or no?

12:52PM

11 A. That is not correct. I --

12 Q. Okay. Thank you. That's your opinion. I
13 appreciate it.

14 A. I contacted customers who had purchased --

12:52PM

15 Q. Your Honor --

16 THE COURT: Sir, you need to answer the
17 question and that's it.

18 BY MR. STECKLER:

19 Q. Did you or your law firm at any point in time ever
20 own the website *www.diamondsdirectlawsuit.com*?

12:52PM

21 A. Not that I recall.

22 Q. Okay. You're aware you're under oath?

23 A. Yes, sir.

24 Q. Okay. And you're aware that Diamonds Direct,
25 through an asset purchase agreement, purchased Diamond

12:53PM

1 Doctor? Are you aware of that?

2 A. Yes. Well, it purchased the assets of Diamond
3 Doctor and the intellectual property. I don't -- it
4 didn't --

12:53PM

5 Q. Are you aware of the asset purchase agreement of
6 November 1st, 2016, sir?

7 A. I'm aware that there is one. It's been designated
8 Attorneys' Eyes Only. So, I've never seen it.

12:53PM

9 Q. Correct. I'm asking about the fact. I'm not
10 asking about the contents of it.

11 A. Yes, I'm aware that there is one.

12 Q. Okay. And are you currently representing Diamonds
13 Direct?

14 A. Yes, I represent Diamonds Direct.

12:54PM

15 Q. You have an engagement agreement with them; is
16 that right?

17 A. Correct.

18 Q. And they pay you a monthly fee, correct?

19 A. Yes.

12:54PM

20 Q. Right. Whether you do work or not, they pay you a
21 monthly fee; is that right?

22 A. They pay us a monthly retainer and some months we
23 do --

24 Q. That's not my --

12:54PM

25 A. -- lots of work and there have been months where

1 we don't do any work.

2 Q. And that's my point. You get paid a monthly
3 retainer whether you do work or not, correct?

4 A. Yes.

12:54PM

5 Q. Okay. And you represent DISF; is that right?

6 A. Yes.

7 Q. And DISF has this website, right? It's
8 *www.ddtaxfraud.com*, right?

9 A. Yes.

12:54PM

10 Q. DISF has a website *www.suedavidblank.com*, correct?

11 A. Yes.

12 Q. DISF also has a website *www.ddvictimsfund*, right?

13 A. Yes.

14 Q. All right. And on these websites that your client
15 DISF owns, you have posted customer names, correct?

12:55PM

16 MR. SCHWEGMANN: Objection, your Honor.

17 BY MR. STECKLER:

18 Q. Excuse me. DISF has posted customer names,
19 correct?

12:55PM

20 THE COURT: Did you make an objection?

21 MR. SCHWEGMANN: I did. He clarified it.

22 Thank you.

23 BY MR. STECKLER:

24 Q. DISF posted customer names, right?

12:55PM

25 A. Yes, they posted names of customers who purchased

1 things from Diamond Doctor.

2 Q. And the amount they purchased, right?

3 A. Yeah. It shows the purchase price.

4 Q. And all of that is listed on this website,
12:55PM 5 correct?

6 A. The customer name, the certification, the price,
7 and the date, yes.

8 Q. Yeah. All right. And did you talk to Diamonds
9 Direct about the fact that you represented DISF that was
12:56PM 10 posting these names on their website? Did you speak to
11 them?

12 MR. SCHWEGMANN: I think you can -- well...

13 BY MR. STECKLER:

14 Q. Did you speak to them is the question.

12:56PM 15 A. Yes.

16 Q. Okay. Did you do a conflict check or waiver with
17 respect to your representation of these two clients?

18 MR. SCHWEGMANN: Your Honor, objection,
19 relevance.

12:56PM 20 THE COURT: Overruled.

21 A. Yes.

22 BY MR. STECKLER:

23 Q. And did Diamonds Direct at any point in time
24 object or instruct you not to represent DISF?

12:56PM 25 A. I don't want to get into a situation where I'm

1 arguably waiving privilege between conversations between
2 me and Diamonds Direct. I want to be responsive to your
3 question. And I guess I'm asking if I can answer that
4 question without waiving a privilege that would belong to
5 my client Diamonds Direct as to other information.

12:57PM

6 BY MR. STECKLER:

7 Q. Well, did you see any of the information on the
8 DISF websites before it was published?

9 A. Did I see it?

12:57PM

10 Q. Yes.

11 A. Prior to it being published on the websites?

12 Q. Yes.

13 A. (No audible response.)

14 Q. So, you were aware that the information being
15 published on these websites could potentially be harmful
16 to another client, correct?

12:57PM

17 A. No.

18 MR. SCHWEGMANN: Your Honor, it's not my
19 privilege; but I feel I have to stand. Neither of the
20 two entities are in the room.

12:58PM

21 THE COURT: Well --

22 MR. STECKLER: He's the attorney for both
23 entities, and I'm asking him whether he thinks it would
24 be harmful. I'm not asking what was said.

12:58PM

25 THE COURT: Right. And I don't want you to

1 talk about -- and I think you have not thus far talked
2 about -- the substance of the communications.

3 I think the questions that have been asked so
4 far he can properly answer without waiving any kind of
5 privilege.

12:58PM

6 MR. SCHWEGMANN: My concern is the parties
7 that need to protect their own privilege aren't here; and
8 as a result, they don't have -- they can't stand up to
9 protect the privilege themselves. But I'll be careful
10 and listen to the questions before I stand up again.

12:58PM

11 A. I think I can answer that. It asks for my mental
12 impression, but again --

13 BY MR. STECKLER:

14 Q. No, I'm asking you: In your opinion, do you think
15 that the posting of Diamond Direct's customer information
16 that they purchased on this website of DISF could be
17 harmful to them?

12:58PM

18 A. No.

19 Q. Why not?

12:59PM

20 A. Not initially.

21 Q. Why not?

22 A. These were customers of Diamond Doctor; and in the
23 asset purchase, Diamonds Direct, as my understanding --
24 and it's clear when you drive by their storefront -- was
25 going to do business on a go-forward basis as Diamonds

12:59PM

1 Direct.

2 One of the things that concerned me later
3 on -- and it frankly wasn't something that I appreciated
4 when DISF initially published this -- was would these
5 customers associate this website with Diamonds Direct.
6 Would they say, hey, I bought this at Diamond Doctor; but
7 Diamonds Direct is the store there now; is Diamonds
8 Direct putting out information?

9 One thing that never even occurred to me is
10 that sometimes these individuals buy jewelry for people
11 who aren't their wife, for example, and they don't want
12 that information there and they might call Diamonds
13 Direct and say, "Hey, why is this here?" Because there
14 isn't a Diamond Doctor to call anymore. So, that's a
15 long way to answer your question.

16 Q. So --

17 A. Initially no, I did not see that there would be a
18 nexus between the two.

19 Q. So, why would Diamonds Direct -- part of the asset
20 purchase, why would they be purchasing names and
21 information about customers if that's not important to
22 them or it may not hurt them by putting this out on the
23 website?

24 MR. SCHWEGMANN: Foundation, speculation.

25 A. Well -- right. It's not my testimony that --

1 THE COURT: Hold on just a second.

2 I'm going to sustain the objection.

3 MR. STECKLER: Yes, I understand.

4 BY MR. STECKLER:

01:01PM

5 Q. You understand where the asset purchase agreement
6 may involve -- first of all, you haven't seen the asset
7 purchase agreement, right?

8 A. No, sir.

01:01PM

9 Q. Diamonds Direct never provided it to you, did
10 they?

11 A. No. I have not seen it.

12 Q. No. They never provided it to you, did they?

13 A. Right. It hasn't been provided to me by anyone.

01:01PM

14 Q. And you don't know what they purchased, do you?
15 You don't know what was purchased in this agreement
16 between Diamond Doctor and Diamonds Direct, right?

17 A. I have a sense of it for --

18 Q. Well, hold on. You haven't seen it.

01:01PM

19 A. Mr. Steckler, I could know from what they tell me
20 generally. I have a knowledge of it just because David
21 Blank has made statements about it. There are news
22 stories about it. So, I don't have any personal
23 knowledge in the sense that I didn't negotiate the
24 transaction and I haven't read the asset purchase

01:01PM

25 agreement, but I can't tell you no, I don't know what

1 they purchased. I know that they got inventory. I know
2 that they got the intellectual property because we have a
3 lawsuit with Diamond Doctor in federal court in Arizona
4 about intellectual property. So, there are other ways
5 that what Diamonds Direct bought came to my attention
6 that wasn't through reading the actual purchase --

01:02PM

7 Q. So, do you know whether or not -- from the
8 information you've gleaned through your own intuitive
9 nature, whether or not one of the assets purchased was
10 customer name and pricing of diamonds? Do you know that
11 for a fact? Yes or no?

01:02PM

12 A. I know it for a fact as I sit here now because you
13 testified to it.

14 Q. No, I'm not -- I'm asking you: Did you know that
15 at any point?

01:02PM

16 A. I wasn't -- if you're asking me from a personal
17 knowledge standpoint, I didn't negotiate the transaction.

18 Q. That is my point. You didn't know whether
19 customer names and purchase prices were an asset
20 purchased by Diamonds Direct, your client.

01:02PM

21 A. I was told that.

22 Q. When?

23 A. At some point by Diamonds Direct but --

24 Q. So, despite --

01:02PM

25 A. You told my attorneys that --

1 Q. So, despite that, you think it's okay to put
2 customer names and the price they paid on the websites
3 that are controlled by your client DISF, right?

01:03PM

4 MR. SCHWEGMANN: Objection, your Honor. The
5 question is vague with respect to "you," and it also
6 calls for some either legal or ethical opinion. I'm not
7 sure again the relevance of any of this.

8 MR. STECKLER: Well --

01:03PM

9 THE COURT: If you want to direct the use of
10 "you" to DISF, do that; but otherwise, the objection is
11 overruled. Or I'll make the correction for you.

12 MR. STECKLER: Please.

13 THE COURT: Substitute "DISF" in place of
14 "you," and then you can answer the question.

01:03PM

15 A. Can you ask the question again?

16 BY MR. STECKLER:

17 Q. I was afraid you were going to say that.

18 A. I know. I...

01:03PM

19 Q. So, you didn't know whether customer names and
20 pricing information were an asset purchased by Diamonds
21 Direct; and you didn't even learn it until recently,
22 correct? Is that correct?

23 A. Mr. Steckler, I'm trying to pinpoint --

01:04PM

24 Q. I understand. I'm asking you whether you knew it
25 or not because you must have had to have known it before

1 you represent DISF and they're putting it online.

2 A. I can't say for certainty that I knew it before,
3 but I knew it very soon thereafter if I didn't know it
4 before.

01:04PM

5 Q. So, you could see where if they're purchasing
6 customer names and prices and DISF, your other client, is
7 putting them online, that could be a problem, couldn't
8 it?

9 A. Yeah, it could in some sense; but the thing --

01:04PM

10 Q. Thank you. That's my question.

11 A. We also had the customer information ourselves.

12 MR. STECKLER: May I approach, your Honor?

13 THE COURT: Yes.

14 Sir, we -- if you'll not talk until you get to
15 the microphone.

01:04PM

16 MR. STECKLER: Let me see if I have it here.

17 Here, I have it.

18 A. This would appear to be hearsay.

19 MR. SCHWEGMANN: He didn't ask you a question
20 yet.

01:05PM

21 BY MR. STECKLER:

22 Q. Do you know who Adam Ross is?

23 A. Yes.

24 Q. Who is he?

01:05PM

25 A. He is a lawyer in Charlotte, North Carolina.

1 Q. Does he also represent Diamonds Direct?

2 A. Yes.

3 Q. He's a trial lawyer for Diamonds Direct, isn't he?

4 A. No. I think he primarily does transactional work.

01:05PM

5 Q. Okay. Are you sure about that?

6 A. I know he handles their transactional work and a
7 lot of real estate issues for them. I -- I'll leave it
8 at that.

01:06PM

9 Q. Regardless, they do represent Diamonds Direct,
10 correct?

11 A. Adam Ross does, yes.

12 Q. Right. And his law firm, right?

13 A. Yes.

14 Q. James McElroy & Diehl, right?

01:06PM

15 A. Correct.

16 Q. And if you read the e-mail from me to Mr. Ross --

17 MR. SCHWEGMANN: Your Honor --

18 BY MR. STECKLER:

19 Q. -- at the bottom --

01:06PM

20 MR. STECKLER: Hold on, please. Let me ask
21 the question, and then you can object.

22 MR. SCHWEGMANN: I'm sorry.

23 BY MR. STECKLER:

24 Q. In this e-mail I'm asking him questions about

01:06PM

25 DISF's website. Do you see that? I'm just asking you if

1 you see that in the e-mail.

2 A. At the bottom, the original e-mail from you to
3 Mr. Ross?

4 Q. Yes.

01:06PM

5 A. I see a question.

6 Q. Okay. And it's -- and the question relates to
7 *ddvictimfund*; is that right?

8 A. The one question is --

01:07PM

9 Q. Okay. Well, I mean, you can read it. "It comes
10 to our attention" -- they put -- I made some statements.
11 And I'm not seeking to add hearsay. I'm just saying I'm
12 raising DISF website in this e-mail, aren't I?

13 MR. SCHWEGMANN: Your Honor, I object to both
14 the question and the document itself are hearsay.

01:07PM

15 MR. STECKLER: I am asking about the document,
16 and I'm trying to lay the foundation.

17 BY MR. STECKLER:

18 Q. The e-mail asks about *ddvictimfund* website,
19 correct?

01:07PM

20 A. I don't have any personal knowledge of this --

21 Q. I understand that. I'm asking you if the e-mail
22 asks about *ddvictimfund* website.

23 MR. SCHWEGMANN: Objection, hearsay.

24 BY MR. STECKLER:

01:07PM

25 Q. I'm asking if that's what's in the e-mail. I'm

1 asking you as a foundation.

2 MR. STECKLER: If the court will indulge me.

3 THE COURT: Mr. Steckler, you're asking

4 foundation questions for a document that isn't

01:07PM

5 admissible.

6 MR. STECKLER: I understand. Let me see if I

7 can try this another way.

8 THE COURT: But there's really no way you can

9 make this document admissible.

01:07PM

10 MR. STECKLER: I'm not seeking to admit it. I

11 have not offered it for admission. I'd like to ask some

12 questions about the e-mail. In other words, I'd like to

13 have him read what is written here, if the court will

14 indulge me, and ask him if he had those conversations

01:08PM

15 with his client just like Mr. Ross has told me. I want

16 to know if he had similar conversations as what's laid

17 forth here.

18 MR. SCHWEGMANN: Well, then my objection would

19 be not only hearsay but privilege if he had certain

01:08PM

20 conversations with his client Diamonds Direct about this.

21 So, in either event it's inadmissible.

22 MR. STECKLER: May I try?

23 THE COURT: Well, what's your response to the

24 privileged objection?

01:08PM

25 MR. STECKLER: Well, I'm wondering whether --

1 well, my foundation is whether he gleaned information --
2 whether he was told -- that's all --

3 THE COURT: Yeah.

01:08PM

4 MR. STECKLER: You're right. I think you're
5 right, and I hate to say it.

6 THE COURT: I think it's sustained.

7 MR. STECKLER: Yeah. Thank you. I apologize.

8 Your Honor, we don't intend to offer that as
9 an exhibit in the record.

01:08PM

10 BY MR. STECKLER:

11 Q. Let me ask you a few questions about the websites
12 that have been put up, Diamond Doctor Victim Fund real
13 quick.

14 You are the incorporator, correct?

01:09PM

15 A. Of DISF, yes.

16 Q. Right. We did some research on the incorporation,
17 and I don't know if that's been offered into evidence yet
18 or not. Let me go ahead and offer that into evidence
19 real quick, and I've got a quick question.

01:09PM

20 MR. STECKLER: Your Honor, I don't think you
21 have the --

22 THE COURT: Yeah, I don't think that I do.
23 Thank you.

01:09PM

24 MR. STECKLER: We're going to call this
25 Exhibit 12.

1 BY MR. STECKLER:

2 Q. Under -- I guess on the -- on the second page --
3 this is labeled "Charter Nonprofit Corporation." Do you
4 see that?

01:10PM

5 A. Yes, sir.

6 Q. Okay. Under No. 4, it says, "The name and
7 complete address of its initial registered agent and
8 office located in the state of Tennessee is." Do you see
9 that?

01:10PM

10 A. Yes, sir.

11 Q. Who is listed?

12 A. Cummings Manookian PLC and then the addresses --
13 the office address for Cummings Manookian in Nashville.

14 Q. Okay. And if you look at No. 9, down there.

01:10PM

15 A. Yes, sir.

16 Q. It says, "The complete address of its principal
17 office is"; and this has to do with the principal office
18 of the Diamonds Integrity Standards Foundation, right?

19 A. Correct.

01:10PM

20 Q. What is listed?

21 A. The same address: 45 Music Square West,
22 Nashville, Tennessee.

23 Q. That's your law firm address, right?

24 A. Correct.

01:10PM

25 Q. And if we go to the last page, under No. 11 it

1 says, "Incorporator," correct?

2 A. Yes, sir.

3 Q. And it lists you as the incorporator, correct?

4 A. Yes, sir.

01:11PM

5 Q. And again your business address, right?

6 A. That's correct.

7 Q. And at the bottom the date is May 4, 2017,
8 correct?

9 A. Correct.

01:11PM

10 Q. Okay. Who is on the board of DISF?

11 A. I know who the director is. I don't know who the
12 board is, if there is a board.

13 Q. Who is the director of DISF?

14 A. I believe Felipe De Mase.

01:11PM

15 Q. Who is that?

16 Can you spell that?

17 A. Felipe, F-E-L-I-P-E, De, D-E, Mase, M-A-S-E.

18 Q. Who is he?

19 A. He's the director of the DISF. He's an
20 individual.

01:11PM

21 Q. Tell me about him.

22 A. He is a dual citizen of Italy and Argentina.

23 Q. Yes. What does he do for a living?

24 A. He's retired.

01:12PM

25 Q. How do you know him?

1 A. He found us through our web page.

2 Q. Which web page?

3 A. *diamondlawsuit.com*.

4 Q. And where does he live?

01:12PM 5 A. I believe he's in Italy currently.

6 Q. How long is he going to be in Italy?

7 A. I don't know the answer to that.

8 Q. As the incorporator, did you set up the articles
9 of incorporation?

01:12PM 10 A. I set up the charter, yes, and the articles of
11 incorporation.

12 Q. And did you put together the bylaws?

13 A. Yes.

14 Q. And did you set up a board of directors?

01:12PM 15 A. No. There is a director that I am aware of.

16 Q. And who is the one director? It's Felipe?

17 A. Felipe De Mase.

18 Q. Felipe De Mase. And do you have his home address?

19 A. Yes.

01:13PM 20 Q. And it's -- his home address is in Italy?

21 A. He has an address in Italy and one in Argentina.

22 Q. I see. And is English his first language?

23 A. No.

01:13PM 24 Q. Why is -- do you know why he is interested in
25 putting up a Diamond Integrity Standards Foundation

1 website?

2 A. I do.

3 Q. Yeah. Why?

4 A. That's attorney-client privileged and information

01:13PM

5 that he shared with me as an attorney.

6 Q. Was he a customer of Diamond Doctor?

7 A. I don't know the answer to that.

8 Q. Has he ever been to Dallas?

9 A. I don't know the answer to that.

01:13PM

10 Q. Has he ever purchased an item from Diamond Doctor

11 that you're aware of as you sit here today?

12 A. I do not know if he has or has not.

13 Q. Is he a lawyer?

14 A. No.

01:14PM

15 Q. Is he familiar with the -- have intimate

16 familiarity with the tax code, that you know of?

17 A. No, not that I know of.

18 Q. Are you his lawyer?

19 A. Yes.

01:14PM

20 Q. Individually and as DISF?

21 A. I represent him, and I represent the organization

22 DISF.

23 Q. Okay.

24 MR. STECKLER: Let's go to the

01:14PM

25 *ddvictimfund.com* website. We're going to put it up

1 online.

2 Have we introduced any of that as evidence?
3 Let's go ahead and, if I may, just mark them as exhibits
4 for the court's consideration.

01:14PM

5 THE COURT: Did you intend to offer Exhibit
6 No. 12?

7 MR. STECKLER: That would be the -- that would
8 have been -- yes, I did. I apologize. Yes.

01:14PM

9 THE COURT: All right. Do you have any
10 objection?

11 MR. SCHWEGMANN: No, your Honor.

12 THE COURT: All right. Exhibit 12 is
13 admitted.

14 MR. STECKLER: May I approach?

01:15PM

15 THE COURT: Yes.

16 MR. STECKLER: This will be Exhibit 13.

17 BY MR. STECKLER:

01:15PM

18 Q. Now, for convenience of the court, Mr. Manookian,
19 I'd like you to look up at the screen. It might be
20 helpful for all of us so we can be on the same page.

21 Is there a Victim Fund?

22 A. Yes.

23 Q. How much is in the Victim Fund?

24 A. I do not know the answer to that.

01:15PM

25 Q. Who set up the Victim Fund?

1 A. The DISF.

2 Q. Did you set up the fund?

3 A. No.

4 Q. Okay. Did you advise Mr. Felipe De Mase that you
01:16PM 5 were being sued by Diamond Doctor?

6 MR. SCHWEGMANN: Objection, your Honor.

7 Again, it's not my privilege but --

8 MR. STECKLER: Your Honor, I understand. I
9 understand. Forget it.

01:16PM 10 THE COURT: Sustained.

11 BY MR. STECKLER:

12 Q. This Victim Fund maintains a master database of
13 customers. Do you see that?

14 A. Yes.

01:16PM 15 Q. And you've relied upon that database of customers,
16 correct?

17 A. I have relied upon it?

18 Q. Yes.

19 A. In what respect?

01:16PM 20 Q. You've used them for your own investigations,
21 correct?

22 A. I called the three individuals regarding sales tax
23 not from this database but from the *ddsalestax.com*
24 database.

01:17PM 25 Q. I understand, and it's used -- is there a

1 difference between *ddtaxfraud.com* database and
2 *ddvictimfund*?

3 A. Yes, absolutely.

4 Q. Tell me the difference between the two.

01:17PM

5 A. Okay. So, the Victim Fund identifies individuals
6 who bought EGL-Israel or in-house graded diamonds. Those
7 were the two categories of diamonds that were
8 systemically and massively overgraded.

9 Q. Hold on real quick. And I apologize to interrupt.

01:17PM

10 A. The distinction between the two --

11 Q. You know what? Let me let you finish. I
12 apologize. Go ahead.

13 A. Okay. So, the Victim Fund exists for individuals
14 who bought EGL-I diamonds or in-house graded diamonds.

01:18PM

15 One of the biggest problems is these consumers have no
16 clue that their diamond is overgraded for years and years
17 and years and, so, what often happens is there will be a
18 divorce, a death in the family, sometimes there's a
19 financial catastrophe and, so, they take their diamond to
20 have it sold and then they find out that, hey, this was
21 supposed to be an F grade and it's really a J. But when
22 they take it around in the Dallas area, generally it's
23 just to an appraiser. You'll see oftentimes they'll take
24 it to Robbins Brothers, Bachendorf's --

01:18PM

01:18PM

25 Q. I'm sorry. I hate to interrupt. I asked you if

1 there's a difference between the two databases, not your
2 theory.

3 THE COURT: But, sir, I'm actually going to --
4 if you will just simply state the differences because of
5 our time constraint.

01:18PM

6 A. The Victim Fund is limited to people who bought
7 EGL-I in assisting them in getting them graded
8 objectively by the GIA and paying for it. The *ddtaxfraud*
9 database -- and this is my knowledge -- lists people who
10 purchased items from Diamond Doctor in-state and who are
11 in-state residents where no sales tax was charged,
12 collected, or remitted. So, the universe of their
13 transactions is not limited to EGL-I diamonds.

01:19PM

14 BY MR. STECKLER:

01:19PM

15 Q. What's the basis of your knowledge about these two
16 websites and what's contained in them?

17 A. My knowledge about the websites?

18 Q. Yeah.

19 A. What's publicly available on here.

01:19PM

20 Q. No, no. But what's your knowledge about how
21 they're two different ones?

22 A. It says right here that this one is EGL-I and you
23 can see it's EGL-I and in-house and the tax fraud site is
24 not limited to EGL-I.

01:19PM

25 Q. I see.

1 A. It's all transactions where sales tax wasn't
2 collected but it was an in-state qualifying transaction.

3 Q. How did your client get those documents? How did
4 Felipe De Mase get these documents?

01:20PM

5 A. That's attorney-client privileged as well. You'd
6 have to ask him.

01:20PM

7 MR. STECKLER: Your Honor, I would argue that
8 there are very limited options of how he got them, and
9 one of them would involve a crime fraud exception to any
10 privilege that's being asserted here.

01:20PM

11 MR. SCHWEGMANN: Your Honor, except that none
12 of -- as Mr. Steckler himself testified, none of the
13 information -- they haven't established that any of the
14 information on either of these websites came from them.
15 I mean, it's -- and --

16 THE COURT: Okay. Hold on just a second.
17 Let me just ask you, sir.

18 THE WITNESS: Yes, your Honor.

01:20PM

19 THE COURT: Do you know how the client
20 information that is on the websites labeled Exhibits 2,
21 3, and 13 got on these websites? Do you know that?

22 THE WITNESS: I know how it got on the
23 websites, yes.

01:21PM

24 THE COURT: All right. Do you know where --
25 the customer information on these three websites, do you

1 know how -- where the customer information was obtained
2 from?

3 THE WITNESS: Yes. I know that the DISF
4 obtained it from Felipe De Mase. I do not know from
5 there.

01:21PM

6 THE COURT: So, it's your testimony that you
7 do not know how this Felipe De Mase acquired the customer
8 information that is on these three websites.

9 THE WITNESS: Correct.

01:21PM

10 THE COURT: Okay. All right.

11 Do you have any additional questions?

12 MR. STECKLER: I do have a few.

13 BY MR. STECKLER:

14 Q. On this *ddvictimfund* website, if you'd go to the
15 very last page. Can you read what it says there?

01:21PM

16 A. "The DISF provides access to independent
17 attorneys, law firms, and self-assisted legal services at
18 your specific direction. The DISF is not a law firm or
19 substitute for an attorney or law firm. The DISF itself
20 does not provide advice, explanation, opinion, or
21 recommendation about legal rights, remedies, defenses,
22 options, selection of forums or strategies. Your access
23 to this website is subject to these terms."

01:22PM

24 Q. Okay. And I noticed on the *ddvictimfund* website,
25 if you click on -- it says "Complaint." Are you aware

01:22PM

1 that a lawsuit comes up?

2 A. Yes. It's a template original petition; and to my
3 understanding, it includes the specific sale details for
4 the customer that it's tailored for.

01:23PM

5 Q. Okay.

6 MR. STECKLER: Your Honor, may I approach and
7 offer this into evidence real quick? This would be
8 Exhibit No. 14.

9 BY MR. STECKLER:

01:23PM

10 Q. So, this is an example of one of the original
11 petitions that pops up on *ddvictimfund* website. How did
12 Mr. Felipe De Mase create this petition? Do you know?

13 A. Well, I'm not sure that this is what pops up.
14 This -- the typeface in this is different throughout.

01:23PM

15 Q. Well, why don't we just take a look at it online
16 up here and we can see what pops up. I'm sorry. It's
17 Matan Abehasira. I think we talked about her
18 declaration, or his. I don't know.

01:24PM

19 This right here, if you click on that, that's
20 what shows up, right?

21 A. Right. And just to be clear, what you're clicking
22 on is a local file that somebody has saved somewhere.
23 That doesn't appear to be anything that's online.

01:24PM

24 Q. That's correct. It was downloaded from this
25 website to capture it so we could ask questions about it

1 in the course of this lawsuit.

2 A. Okay. And I don't know that to be the case; and
3 with all the documents that have been --

4 Q. I understand that --

01:24PM

5 A. -- fabricated by this side, I don't want to
6 testify that this is what you purport it is because I
7 don't know.

8 Q. I understand. So, let me ask you this question.
9 Tell me, based upon your knowledge as a party in this

01:24PM

10 case, what court has ruled there's fabricated documents.

11 A. What court has ruled there's fabricated documents?

12 Q. Yes. Yeah. What court?

13 A. I believe it was stipulated that the receipts,
14 appraisals, and invoices all had bogus disclaimers on

01:25PM

15 them; and as a result, the plaintiff in this case is
16 required -- can't say that there were disclosures on any
17 of this.

18 Q. So, it's your testimony this court has ruled that
19 defendants fabricated documents. Is that your

01:25PM

20 understanding the court ordered that -- plaintiffs, I
21 mean. Excuse me. Let me rephrase. Let me withdraw the
22 question.

23 So, it's your understanding this court has
24 ruled that plaintiffs fabricated documents? Is that

01:25PM

25 your understanding?

1 A. The plaintiffs produced fabricated documents that
2 were not reflective of original --

3 MR. STECKLER: Objection.

4 BY MR. STECKLER:

01:25PM

5 Q. Counsel, if I may, please listen to my question.

6 Has a court in this case ruled that defendants
7 fabricated documents -- that plaintiffs -- excuse me. I
8 keep mixing my -- let me withdraw the question. It's
9 very simple.

01:26PM

10 MR. SCHWEGMANN: May I short-circuit it just
11 by saying that the court, Mazzant, made a written ruling
12 on this issue that your Honor can peruse on PACER at your
13 leisure? I'm not sure what his understanding is relevant
14 to when the court can just read the court's opinion on
15 the issue.

01:26PM

16 MR. STECKLER: Well, he seems to --

17 A. I'll defer to the order.

18 BY MR. STECKLER:

19 Q. Thank you. Because you seem to have a

01:26PM

20 misimpression that the court's ruled there's a
21 fabrication, and I suggest that you take a look at the
22 public documents.

23 But regardless, you're aware that if you click
24 on the DISF website, a sample petition comes up, correct?

01:26PM

25 Do you know that as their lawyer?

1 A. When you say "the DISF website," you've referred
2 to multiple different --

3 Q. I'm referring to the one that we just looked at
4 right here that's sitting right in front of you, sir.

01:26PM

5 A. Okay. And again, to be clear, this is a local
6 file on --

7 Q. I'm asking you a question --

8 A. -- not a website --

9 MR. STECKLER: Your Honor?

01:26PM

10 THE COURT: Sir, he's no longer asking you
11 about the exhibit, what's been marked as Exhibit 14. I
12 think the question generally is now just about the
13 website.

01:27PM

14 A. I'm generally aware that on Diamond Doctor Victim
15 Fund, for each listed customer that bought one of the
16 suspect diamonds, they could click, just like on
17 LegalZoom, and have a tailored petition specific to their
18 transaction available for download.

19 BY MR. STECKLER:

01:27PM

20 Q. Did you draft the petition?

21 A. No. My understanding is that these are based on
22 the nine lawsuits that have been filed against Diamond
23 Doctor by other consumers.

01:27PM

24 Q. Well, hold on. The nine lawsuits, they're being
25 represented by your co-conspirator Mark Hammervold,

1 aren't they?

2 MR. SCHWEGMANN: Objection, your Honor.

3 Co-conspirator Mark Hammervold -- I guess I'll say it
4 assumes facts not in evidence.

01:28PM

5 THE COURT: Overruled.

6 A. Those individuals are represented by an attorney
7 that is not me and is not with my law firm.

8 BY MR. STECKLER:

9 Q. Those individuals are represented by Mark

01:28PM

10 Hammervold, correct?

11 A. And I believe another --

12 Q. Is that correct?

13 A. -- Texas lawyer --

14 Q. Is that correct?

01:28PM

15 A. Yes, and another Texas lawyer --

16 Q. Excuse me. I asked you a --

17 THE COURT: Sir, just answer the questions.

18 BY MR. STECKLER:

19 Q. Are they represented by Mark Hammervold?

01:28PM

20 A. To my knowledge.

21 Q. You worked with Mark Hammervold at a law firm in
22 Tennessee, correct?

23 A. Yes.

24 Q. You sent clients to Mark Hammervold, correct?

01:28PM

25 A. Frequently, yes.

1 Q. You sent nine clients to Mark Hammervold to sue
2 Diamond Doctor, correct?

3 A. No.

4 Q. You've never sent clients to Mark Hammervold
5 against Diamond Doctor -- to sue Diamond Doctor, correct?

6 A. That wasn't my testimony.

7 Q. Well, what is your testimony? Did you send
8 clients to Mark Hammervold to file suits against Diamond
9 Doctor or not?

10 A. We've referred clients to Mark Hammervold.

11 Q. To sue Diamond Doctor, sir?

12 A. We refer clients --

13 Q. Excuse me. If --

14 A. If you'll let me finish.

15 MR. SCHWEGMANN: You have to let him answer.

16 MR. STECKLER: I understand. The question is
17 simple. It's a yes or no.

18 BY MR. STECKLER:

19 Q. Did you refer clients to Mark Hammervold to sue
20 Diamond Doctor or not?

21 A. Sir, we refer clients who have potential cases
22 against Diamond Doctor. It's not -- we don't elect
23 whether to file the suits. Sometimes Mark Hammervold
24 chooses to based on the facts and his investigation, and
25 sometimes he doesn't.

1 Q. So, the answer is yes, you have referred clients
2 to Mark Hammervold for cases against the Diamond Doctor,
3 correct?

4 A. For which he has filed suit, yes.

01:29PM

5 Q. Right. And, in fact, if we -- let me hand you --
6 MR. STECKLER: Did we offer 14?

7 THE COURT: Well, 14 was not offered; but
8 something has been marked as 14.

01:29PM

9 MR. STECKLER: Your Honor, for a little
10 housecleaning, I would like to offer -- I don't know if
11 I've offered any of the other ones there. I did not
12 offer the e-mail.

13 MR. SCHWEGMANN: Correct. And I object to 14
14 because he never laid a proper foundation for it.

01:30PM

15 THE COURT: Well, now, hold on. 13 was the
16 web -- the Victim Fund website. That's admitted.

17 MR. SCHWEGMANN: No objection.

18 THE COURT: 12 was the e-mail that --

19 MR. STECKLER: We never offered.

01:30PM

20 THE COURT: -- is not going to be admitted.

21 13 is the petition which is not going to be
22 admitted -- no, 14 is the petition which is not going to
23 be admitted. So, you're on 15 now.

24 MR. STECKLER: Okay.

01:30PM

25 MR. SCHWEGMANN: He hasn't seen 15 yet, as far

1 as I know.

2 MR. STECKLER: He hasn't seen 15.

3 THE COURT: Right.

4 BY MR. STECKLER:

01:30PM

5 Q. Let me ask you a question about 14. Does that
6 appear to be similar to the petitions that were on the
7 DISF website?

8 A. Yes, it appears to be similar.

9 Q. Okay.

01:30PM

10 A. I don't know if --

11 Q. Anything in there that appears to be different to
12 you?

13 A. The typeface is different throughout. And again,
14 I'm not familiar personally with each of these petitions.
15 I doubt -- I know that I've never read this before.

01:31PM

16 Q. It's a *pro se* petition; is that right?

17 If you'll go to the last page. It will clear
18 things up quickly if you look at the last page.

19 A. It's drafted as a *pro se* petition. I mean, I
20 assume Matan Abehasira is not a lawyer; but the person is
21 listed as both the plaintiff and who is signing it.

01:31PM

22 Q. Well, on that website that clicked into petitions,
23 it doesn't say whether they're lawyers or not, right? It
24 doesn't say "esquire" after names, does it?

01:31PM

25 A. No, not that I've seen.

1 Q. But you're aware that this website that your
2 client who lives in Italy set up against Diamond Doctor
3 does have a link to click on to petitions, right?

4 A. Yes. Individuals can click on -- it says
5 "Complaint."

01:32PM

6 Q. Well, if you look, it says, "Downloading and
7 filing a custom complaint generated specifically for
8 you." It's bolded right on our computer screen, right?

9 A. Sure. Yes, I see that.

01:32PM

10 Q. And that's what you're aware was going on, right?

11 A. Yes. You could also represent yourself by
12 downloading and filing the custom complaint generated
13 specifically for you and your purchase.

14 MR. STECKLER: May I approach again?

01:32PM

15 THE COURT: Yes.

16 MR. STECKLER: This will be number --

17 THE COURT: 15.

18 MR. STECKLER: -- 15. I am the worst at
19 numbers, and I apologize.

01:32PM

20 MR. SCHWEGMANN: I'm sorry. What was the
21 question?

22 MR. STECKLER: Any objection to that? It's a
23 file stamped copy of the Kelly Dane --

24 MR. SCHWEGMANN: No objection.

01:33PM

25 MR. STECKLER: Okay. We would like to offer

1 this as an exhibit, your Honor.

2 MR. SCHWEGMANN: No objection, your Honor.

3 THE COURT: All right. It's admitted as
4 Exhibit 15.

01:33PM

5 BY MR. STECKLER:

6 Q. If you look at the petition in front of you, this
7 Kelly Dane petition, at the bottom it's submitted -- the
8 name is Mark Hammervold, correct, as well as --

9 A. I see a William C. Dippel.

01:33PM

10 Q. Look below that.

11 A. Yes.

12 Q. Yeah.

13 A. Mark Hammervold, with a PHV admission forthcoming.

01:33PM

14 Q. Was Kelly Dane one of the people that you referred
15 to Mr. Hammervold? Do you know?

16 A. Yes, he was.

17 Q. Okay. And Mr. Hammervold worked with you in
18 Tennessee at a law firm?

01:34PM

19 A. Worked with -- I interviewed him at Vanderbilt,
20 hired him at that law firm; and then we were co-counsel
21 on a lot of health care litigation and medical
22 malpractice cases. So, not just worked. We continue to
23 work together in a number of cases.

24 Q. You refer him all your diamond cases?

01:34PM

25 A. Not all of them.

1 Q. So, which diamond cases are you actively filing
2 right now?

3 A. We've probably accepted a dozen.

01:34PM

4 Q. No, no, that you're counsel of record. How many
5 do you have on file right now that you're counsel of
6 record?

7 A. I don't know the answer to that specifically. The
8 vast majority of them never get filed. So, if you're
9 asking about diamonds matters --

01:34PM

10 Q. No. I'm asking: How many cases are you counsel
11 of record on filed in the United States?

12 A. I don't recall if --

13 Q. Greater than zero?

14 A. Yes, I believe so.

01:34PM

15 Q. Less than five?

16 A. I believe it's less than five currently filed, but
17 I would have to check. I know at least one settled
18 recently.

01:35PM

19 Q. Okay. Will you tell me, other than the name of
20 the plaintiff in the plaintiff's original petition, the
21 difference between your co-defendant, Mr. Hammervold's
22 original compliant with Kelly Dane and the one that you
23 click on the DISF website? Can you just tell me where
24 the two are different --

01:35PM

25 A. It's --

1 Q. -- other than the plaintiff's names?

2 A. -- different defendants. Leslie Greco is a
3 defendant in this one with Kelly Dane.

01:35PM

4 Q. Right. I'm sorry. I didn't mean -- in the body
5 of it, yeah. Go ahead.

6 Well, let's go to -- discovery control plan
7 appears to be the exact same language on No. 1, correct?

8 A. If you want me to read the whole thing, I'm happy
9 to do it; but you're going to have to give me the time.

01:36PM

10 MR. SCHWEGMANN: Your Honor, I'll just object
11 for the record. Relevance.

12 THE COURT: I think your time might be better
13 spent --

01:36PM

14 MR. STECKLER: Yes, I think that's probably
15 correct.

16 BY MR. STECKLER:

17 Q. When was the last time you spoke to Felipe De Mase
18 or whatever? I apologize for butchering the name.

19 A. Within the last week.

01:36PM

20 Q. And how do you communicate?

21 A. Generally by phone.

22 Q. Do you also communicate with him by e-mail?

23 A. I have.

01:36PM

24 Q. And is he the one that controls the three websites
25 *suedavidblank.com*, *ddvictimfund.com*, and *ddtaxfraud.com*?

1 A. No.

2 Q. Who does?

3 A. The DISF.

4 Q. Well, if he is in Italy, how is that decision
5 made?

6 A. How is what decision made?

7 Q. As to what to put up, what not to put up, and when
8 to put it up? Who does that for him? He does it from
9 Italy?

10 A. You would have to ask him or the DISF.

11 Q. I see.

12 MR. STECKLER: Your Honor, is there a
13 possibility we could have the communications between
14 Mr. Manookian and Felipe De Mase reviewed *in camera*?

15 MR. SCHWEGMANN: Your Honor, again I'm
16 hamstrung because I'm standing here protecting a
17 privilege not between myself and my client Mr. Manookian
18 but the privilege between Mr. Manookian and a party not
19 in the courtroom or even a party to this case. I mean,
20 the fact of the matter is if he wants that, there's a
21 proper --

22 THE WITNESS: I can speak to it as the
23 attorney --

24 THE COURT: Let me just say it seems to me
25 that somehow the court is going to get to the bottom of

1 where this information is coming from and how it's being
2 used, and you can't take the positions that no one can
3 answer the questions. That's not sufficient. So, if you
4 want to answer the questions now, you can. I mean, is
5 that what you're willing to do?

01:38PM

6 THE WITNESS: I can't waive privilege for my
7 client. I've already accepted a subpoena on their
8 behalf. When they came to the office and the process
9 server called me, I called him back right away and said,
10 "Come meet me back there. I'll get it." And, so, my
11 understanding of how this is supposed to work is -- DISF
12 is in Tennessee. They've served the subpoena in
13 Tennessee. We moved to quash based on the fact that it
14 called for a deposition three days later with a huge
15 number of topics. It just wasn't possible.

01:38PM

01:38PM

16 And, so, DISF is subject to subpoena in
17 Tennessee; and these questions directly posed to
18 Mr. De Mase or a corporate representative are not going
19 to be covered by privilege. So, the -- that's what we've
20 said all along, is you need to ask them the questions.
21 There's not an effort to shield it or hide it, but I'm
22 not the one to answer it.

01:38PM

23 MR. STECKLER: Who --

24 THE COURT: Who is "them"?

01:39PM

25 THE WITNESS: The DISF or Felipe De Mase,

01:39PM

01:39PM

01:40PM

01:40PM

01:40PM

1 whoever they choose as the corporate rep. For example,
2 of the 26 topics, some of them are highly technical
3 things about a website that I suspect Mr. De Mase is not
4 the representative to testify to. So, because they chose
5 so many specific and very broad, as they can, topics,
6 there may be different individuals to testify to each of
7 them. But the process is by subpoenaing them there.
8 That's why I'm the registered agent. I accepted the
9 subpoena and will produce them, and they will give the
10 testimony.

11 THE COURT: All right. Well, instead of
12 filing a motion to quash, as you know, you could have
13 reached out to counsel and tried to reach an agreeable
14 date. You didn't do that. By what date could you have a
15 representative available to answer the questions on the
16 topics that they have set forth?

17 THE WITNESS: I can't tell you that from this
18 stand. I can agree to do it promptly and expeditiously
19 with the client. I'm getting married on Saturday and
20 then I'll be off for a little bit, but I can arrange for
21 another attorney to represent them in a deposition, if
22 that speeds it along. But there's no effort to either
23 hide it or delay it and we can do it quickly, but I can't
24 give an answer that they'll be available on July 20th as
25 I sit here right now. But I'll agree to work with

1 Mr. Steckler to identify that date.

2 BY MR. STECKLER:

3 Q. Who other than Mr. De Mase is affiliated with
4 DISF?

01:40PM

5 A. I don't know. And I don't know what you mean by
6 "affiliated."

01:41PM

7 Q. Who other than Mr. De Mase that you're aware of as
8 you sit here today has a relationship or any sort of
9 position within the nonprofit that you set up as their
10 lawyer?

11 A. I'm not aware of anyone else that has a seat on
12 the board of directors or an official position.

01:41PM

13 Q. So, the only one you're aware of -- there's you
14 that's the lawyer for DISF and Felipe De Mase is the only
15 other person that you're aware of that has any sort of
16 position, title, relationship with DISF?

17 A. I don't know about relationship. That's the only
18 person that I know that speaks for the DISF.

01:41PM

19 Q. I understand. But in your capacity as the lawyer,
20 do you know of any other employees of DISF?

21 A. No. It's a nonprofit. I'm not aware that it has
22 any employees.

23 Q. Do you know anybody that works for DISF?

24 A. No.

01:42PM

25 Q. Do you know anyone on the board of directors of

1 DISF?

2 A. I only know the director.

3 Q. Do you know any representatives of DISF, someone
4 that represents them in other matters?

01:42PM 5 A. I represent them as their attorney.

6 Q. Other than you, anybody else?

7 A. No, sir.

8 Q. Okay. And let me ask you this: Do you know who
9 funds the DISF?

01:42PM 10 A. Felipe De Mase.

11 Q. Okay. He personally funds it?

12 A. That's my knowledge, yes.

13 Q. Okay. Are there any other relationships between
14 DISF and the Cummings Manookian law firm?

01:42PM 15 A. Registered agent and then I'm representing them
16 with respect to the subpoena that you sent.

17 Q. Yeah. And I take it you had no problem with the
18 DISF website having links to your website on their
19 website.

01:42PM 20 A. No, not at all.

21 Q. And --

22 A. I mean, there's a link on there to I think the
23 article that quotes Mr. Blank extensively about shutting
24 down his business. I mean, the --

01:43PM 25 Q. No, no. I'm just asking you about your law firm.

1 There's a link on DISF's website to your law firm. You
2 have no problem with that?

3 A. No, no problem.

4 Q. Okay. And your law firm website has a link to
5 DISF; isn't that right?

6 A. I don't believe that's true. I'm not --

7 Q. Well, let's just play it again from --

8 A. Again, I see you playing a video. I don't know
9 that to be correct.

10 Q. Well, let's just look at it again. I'm going to
11 show it.

12 A. I know that that site is live. You could go to
13 the site right now and just check it.

14 Q. How do you know it's live?

15 A. My site? The Cummings Manookian site?

16 Q. No.

17 A. You're clicking on the Cummings Manookian site to
18 go to the DISF site. So, I --

19 Q. No. I understand. This was captured at a time --
20 we tried to recreate this before the hearing today, and
21 for some reason it just didn't work today. Do you know
22 why?

23 A. Well, for some reason it just did work on that
24 video. I don't know the answer to that either,

25 Mr. Steckler.

1 Q. You have no problem, though, with your website
2 linking to DISF website?

3 A. It doesn't link to the DISF website.

4 Q. Did it at any point in time that you --

01:44PM

5 A. No, not that I'm aware of. That's the first that
6 I have ever seen of that.

7 Q. Okay. How were the 175 people contacted? Voice
8 messages left, how did that happen?

9 A. You mean in what manner?

01:44PM

10 Q. Yeah. I'm -- would you like your declaration?

11 A. No. I'm trying to determine if you're asking how
12 they were selected, which I believe would be something
13 you need to ask the DISF, versus functionally what
14 technical process was used to contact them, which I don't
15 think would be privileged.

01:45PM

16 Q. Okay. So, you don't know how the -- you know 175
17 people were contacted?

18 A. Yes, I'm aware of that.

19 Q. You just don't know how that happened?

01:45PM

20 A. No, I do know how that happened.

21 Q. How did it happen? How were they selected?

22 A. That's privileged, and you need to ask the DISF
23 that.

24 If you're asking me functionally how they were
25 contacted, I don't think that's privileged. They were

01:45PM

1 contacted through a process called "ringless voice mail."
2 It's not a robo-call in the sense that somebody is dialed
3 and they pick up the phone.

01:45PM

4 Q. Were you familiar with the ringless voice mail
5 sent to the 175 people?

6 A. I researched for the DISF the process of ringless
7 voice mail to ensure that it didn't violate any FTC
8 issues. And, so, I was aware of the process; and that's
9 how I had knowledge of it.

01:46PM

10 Q. So, you were also aware that the ringless voice
11 mails were going to customers of Diamond Doctor, right?

12 A. 175, yes.

13 Q. Okay. And who created the content for the DISF
14 websites?

01:46PM

15 A. Who created the content?

16 Q. Yes.

17 A. I don't know.

18 Q. You don't know?

19 A. The DISF.

01:46PM

20 Q. Okay. Do you know why the language in the DISF
21 websites appears to be so similar to the language in the
22 websites that the Cummings Manookian law firm has put up?

23 A. A lot of it is they're towards the same purpose,
24 which is informing a group of people that were defrauded

01:46PM

25 by Diamond Doctor about the ongoing fraud and --

1 Q. Is it just coincidence?

2 A. Absolutely it's not coincidence. The DISF is very
3 aware of our website.

4 Q. Of course they are because you're their lawyer,
5 right?

6 Who is in charge of editing DISF websites?

7 A. The DISF.

8 Q. Who? Who at the DISF? Name. I need a name.

9 A. I don't know.

10 Q. Okay. Who edits the Cummings Manookian websites?

11 A. There are a number of Cummings Manookian websites.

12 Q. I know. Who edits them?

13 A. Well, Mr. Cummings and myself edited our firm's
14 websites. He did his bio; I did mine.

15 Q. Who else?

16 A. For our firm's website?

17 Q. Well, you've got websites. You've got a Diamond
18 lawsuit website. We looked at that because here -- here
19 we have this website, *diamonddoctorlawsuit*. We have --

20 *www.diamonddoctorclassaction* website you have. You have
21 websites against Mr. Mervis in Maryland, right?

22 A. Yes.

23 Q. So, who edits all of these websites that you-all
24 control?

25 A. I write the vast majority of the content for our

1 websites. We have a lot of websites. We have websites
2 dedicated to medical malpractice --

3 Q. I'm not asking about all the different websites.

4 A. You need to be specific about the one you're

01:48PM

5 asking me about --

6 Q. All of them.

7 A. -- because the answer is different --

8 Q. All of them. Who are the people --

9 A. It's not one person who edits all of them. I do

01:48PM

10 some of them --

11 Q. You're a two-man law firm, correct?

12 A. Correct.

13 Q. Okay. So, you've named the two of you. And I
14 would like to know: Who is the web designer involved in

01:48PM

15 your websites?

16 A. In --

17 Q. Yes.

18 A. They're different web designers.

19 Q. Who are they? I'd like the names of your

01:48PM

20 different web designers you use.

21 A. So, I coded personally our home page

22 *cmtriallawyers*.

23 Q. Okay. Who else?

24 A. Well, I mean --

01:49PM

25 Q. You said you, Mr. Manookian.

1 Sir, I just want the names of different people
2 or different companies you've used on your websites.

3 A. WordPress is who I use for the back end on my
4 website. The theme that I use, the company is Avada,
5 A-V-A-D-A.

01:49PM

6 Q. What about Hilex SEO? Do you use them?

7 A. We've used them for search engine optimization.

8 Q. Okay. Do you use them for your web design or
9 websites?

01:49PM

10 A. No. I primarily do the actual design and coding.

11 Q. Okay. And did you ever do the design and coding
12 for any DISF website?

13 A. No.

14 Q. You did not.

01:49PM

15 A. Did I do the design and coding for it?

16 Q. Yes.

17 A. No, I did not.

18 Q. Do you know who did it?

19 A. The DISF.

01:49PM

20 Q. Who? Is Mr. Felipe De Mase an expert in coding
21 and web design?

22 A. You're going to need to ask him or the DISF that.

23 Q. Okay. Did you review the content as lawyer -- I'm
24 asking if you reviewed it. I don't want to know your

01:50PM

25 conversations. Did you review the content of the DISF

1 websites with Mr. De Mase to determine whether they were
2 in compliance with the law, just like the robo-calls -- I
3 call them robo-calls. You had some fancy name. Do you
4 do that?

01:50PM

5 A. Are you asking me what legal work I did on behalf
6 of Mr. De Mase?

7 Q. Yes.

8 A. I've reviewed the websites, yes.

9 Q. And do you review the content for --

01:50PM

10 A. Yes --

11 Q. -- for him?

12 A. -- I review the content on the websites.

13 Q. And give him legal opinions on it?

14 A. Yes, I've rendered legal opinions on it.

01:50PM

15 Q. Do you edit and modify them for him?

16 A. No.

17 Q. You've never done that?

18 A. No.

19 Q. Okay. And you're aware, though, that he's linking
20 to your websites, though, correct?

01:50PM

21 A. I'm aware of --

22 Q. Who implements your --

23 THE COURT: Wait, wait. Let him answer.

24 MR. STECKLER: I'm sorry. I thought he

01:51PM

25 finished.

1 A. I'm aware of the link on the *ddvictimfund.com*
2 website. I don't know of a link on *ddtaxfraud.com*; and
3 I'm not familiar with the content on the third website,
4 as to whether there's a link or not. There either is or
5 there isn't, and I'll defer to what's on there.

01:51PM

6 THE COURT: I have a couple of questions
7 that -- I'm going to interrupt Mr. Steckler just because
8 of time. The question that Mr. Steckler asked you was
9 are you aware of the link on the Victim Fund website.

01:51PM

10 My question is: Did you give permission to
11 Mr. De Mase for the link to your law firm website to be
12 on the Victim Fund website?

13 THE WITNESS: I don't know if we talked about
14 it ahead of time but I definitely approved of it and I
15 would have ratified it. I thought that -- I think our
16 website does a really good job of explaining what is
17 diamond overgrading. There's, you know, videos and
18 things like that. So, I thought that's a good way to
19 encapsulate this. So, I don't recall if I gave him
20 permission ahead of time but I definitely approved of it
21 and I approve of it.

01:51PM

01:52PM

22 THE COURT: Did you -- I know Mr. Steckler
23 asked you a question about whether you reviewed
24 information on these three websites that are at issue
25 today. My question is a little bit different. Did you

01:52PM

1 provide any of the information on any of these three
2 websites?

3 THE WITNESS: Not the content about customers,
4 prices, or things like that. There are parts of the
01:53PM 5 third site that are almost identical to our site. So, in
6 that sense, you know, I would have been the original
7 author when I wrote that a year and a half -- or back in
8 October of 2015.

9 THE COURT: What about the websites that
01:53PM 10 contain the -- where you can click on both the
11 "declaration" tab as well as the "petition" tab? I think
12 you testified earlier that Mr. De Mase is not a lawyer.
13 So, I -- I think Mr. Steckler may have asked the
14 question. I'm not clear on who provided that
01:53PM 15 information.

16 THE WITNESS: So, this is my understanding.
17 The lawsuits that Mark Hammervold and Bill Dippel filed,
18 the nine lawsuits on behalf of the consumers, largely
19 used the same template. And, so, for the boilerplate
01:54PM 20 allegations and the background allegations, my
21 understanding is the petitions on the website plug in
22 those customers' specific information into template
23 petitions that were already filed in Dallas County.

24 THE COURT: But who drafted the templates of
01:54PM 25 the declaration and the petition that are on the website?

1 THE WITNESS: I mean, in a literal sense it
2 would have been William Kenneth Dippel and Mark
3 Hammervold.

01:54PM

4 THE COURT: And how is it that their templates
5 are on DISF websites?

01:55PM

6 THE WITNESS: They selected those because it's
7 the exact same causes of action and series of background
8 facts to which the transactional facts fit in. It's
9 almost like a template will or sales contract on
10 LegalZoom.

11 THE COURT: Are you the one that gave the
12 approval to Mr. Hammervold to allow him to put his
13 templates for the declaration and petition on the DISF
14 websites?

01:55PM

15 THE WITNESS: Did I approve -- give
16 Mr. Hammervold approval?

01:55PM

17 THE COURT: I haven't heard any association
18 that you've testified about between Mr. Hammervold and
19 DISF. So, I'm trying to figure out how it is that his
20 templates --

21 THE WITNESS: I understand. His complaints
22 are publicly filed. They're posted on a number of places
23 on the Internet. They were covered by National
24 Jeweler --

01:55PM

25 THE COURT: But there is a template for every

1 single customer that's listed on the website.

2 THE WITNESS: Exact same petition every single
3 time, but it fills in a different --

4 THE COURT: I understand.

01:55PM

5 THE WITNESS: It's like a mail merge document.

6 THE COURT: I understand. Who made the
7 decision -- who had the authority to put that template
8 onto this website? If you know.

9 THE WITNESS: The DISF. I don't know that

01:56PM

10 Mark Hammervold had any --

11 THE COURT: But the DISF -- you keep saying
12 that. Someone had to make the decision on behalf of
13 DISF. Who made the decision?

14 THE WITNESS: Felipe De Mase.

01:56PM

15 THE COURT: All right. And my last question
16 is: Were you involved in the selection of the 175
17 customers that were contacted?

18 THE WITNESS: I gave parameters that I thought
19 would be people who should be contacted, but I didn't
20 select individuals. So, I said things like, "Don't
21 contact" -- "it's pointless to contact anyone who bought
22 a GIA diamond. They wouldn't be subject to the fraud
23 issue. You need to look for people who bought EGL-I and
24 generally look for people who bought of a certain --

01:57PM

25 higher than a certain carat weight and in a certain color

1 range." So, I helped tailor parameters for it. I didn't
2 pick individual customers.

3 THE COURT: And you gave those parameters to
4 Mr. De Mase?

01:57PM

5 THE WITNESS: Correct.

6 THE COURT: And what was the purpose of
7 contacting these 175 customers?

01:57PM

8 THE WITNESS: Well, it's the same thing as on
9 the Victim Fund site. It's -- the vast majority of these
10 people still have no clue that their diamond isn't what
11 it was represented to be. And, so, the first step when
12 they find that out -- when you tell somebody "That
13 diamond is not a G," they generally -- they want some
14 type of third-party authority on it; and that is the GIA.

01:58PM

15 That's the Bible of diamond grading. And rather than
16 send them to an appraiser in Dallas who might have a
17 competitive motive to talk badly about Diamond Doctor or
18 David Blank or Bachendorf's who might have years of
19 animus towards David Blank or Diamond Doctor, it's -- you
20 send it to the GIA. It's a nonprofit, and they grade it
21 objectively. So, it's to call them and offer to have the
22 diamond objectively graded by the GIA at cost to the
23 Victim Fund.

01:58PM

24 THE COURT: Let me ask you this. I note that
25 DISF was incorporated in May of 2017; so, fairly

01:58PM

1 recently. And there's been three websites all that are
2 directed specifically at customers of Diamond Doctor.
3 Are there any other websites that are directed at other
4 companies like Diamond Doctor?

01:59PM

5 THE WITNESS: Not that I'm aware of.

6 THE COURT: All right.

7 MR. STECKLER: You just asked my last
8 question, your Honor.

9 BY MR. STECKLER:

01:59PM

10 Q. Are you a defendant in any other lawsuit as you
11 sit here today?

12 A. No.

13 Q. Okay.

14 CROSS-EXAMINATION OF BRIAN MANOOKIAN

01:59PM

15 BY MR. SCHWEGMANN:

16 Q. I don't have much time, and maybe I can cut to the
17 chase and just ask a few simple questions.

18 Mr. Manookian -- if you'll indulge me in
19 leading just briefly. Is it fair to say, Mr. Manookian,

01:59PM

20 that my law firm has never provided you with any
21 discovery materials marked Attorneys' Eyes Only?

22 A. That's correct.

23 Q. Is it fair to say that you have never provided the
24 DISF with any information in this lawsuit marked

02:00PM

25 Attorneys' Eyes Only?

1 A. Correct.

2 Q. Is it fair to say that Mr. Manookian has never --
3 I'm sorry -- Mr. Cummings, sitting over there, has never
4 provided the DISF or anyone else with any information
02:00PM 5 marked Attorneys' Eyes Only in this lawsuit?

6 A. Correct.

7 Q. Is it fair to say that you've never provided
8 discovery materials to the DISF?

9 A. Correct.

02:00PM 10 Q. And as far as you know, is it fair to say that
11 Mr. Cummings has never provided discovery materials, as
12 that term is used in the protective order, to the DISF?

13 A. Correct.

14 Q. Quickly, you've testified that you spoke with
02:00PM 15 three individuals: Lance Crosby, Jerry Myers, and
16 Michael Powell. Do you recall --

17 A. Michelle Powell.

18 Q. I'm sorry. Michelle Powell.

19 What was your purpose in contacting those
02:00PM 20 individuals?

21 A. I wanted to know for a fact the basis for the
22 sales tax fraud allegations. Lance Crosby bought an
23 850,000-dollar diamond and didn't pay a cent of sales
24 tax.

02:01PM 25 Jerry Myers had millions of dollars worth of

02:01PM

1 transactions where it appeared Diamond Doctor would issue
2 an invoice with sales tax on it and then immediately
3 refund it so that he could have an invoice showing that
4 he paid sales tax and then he would buy it again without
5 it. So, before that stuff went up on the Internet with
6 very serious allegations, I wanted to call these
7 individuals and ask them what they knew.

02:01PM

8 I've also been sued for defamation for calling
9 a fraud a fraud; and I want to investigate it the exact
10 same way these guys have called my former employers,
11 subpoenaed my college, my law school. I want to ask the
12 questions and investigate it as well.

02:01PM

13 Q. And during those communications with those
14 individuals, did you make any attempt at all to threaten
15 them?

02:02PM

16 A. Absolutely not. Jerry Myers told me he was out of
17 the country and his wife was sick and could he call me
18 back at a later date, and I could not have been nicer or
19 more polite. The same thing happened with Michelle
20 Powell. She asked me if I could call her back, and I
21 did -- or I did not call her back. We just got off the
22 phone. And Lance Crosby, I just left a voice mail for
23 him.

02:02PM

24 Q. Did you make any attempt to intimidate them?

25 A. No.

1 Q. Do you know whether any of these three individuals
2 are on the witness list filed by the plaintiff today?

3 A. I don't think that they are, including because I
4 believe all three of them made GIA purchases and not
5 EGL-I purchases.

02:02PM

6 Q. All right. Thank you.

7 MR. SCHWEGMANN: I'll reserve the rest of my
8 questions depending on how this -- how we decide to do
9 this hearing.

02:02PM

10 THE COURT: All right.

11 MR. STECKLER: Your Honor, if I can, I don't
12 believe we offered the recording of the voice mail. We
13 will provide you with a copy of that and mark that as
14 Exhibit 16 and offer it at this time.

02:02PM

15 THE COURT: Any objection?

16 MR. SCHWEGMANN: No objection.

17 THE COURT: All right. You may step down.

18 What's your hard stop time now for him?

19 Mr. Manookian, if you need to go, you can.

02:03PM

20 I want to ask counsel, before we conclude
21 today, to articulate what specific relief they are
22 requesting from the court because I will enter an order;
23 and, so, I'd like to hear from each of you specifically
24 what relief you are requesting at this time.

02:03PM

25 MR. SCHWEGMANN: Your Honor, may they be

1 excused, my clients?

2 THE COURT: Yes.

3 MR. SCHWEGMANN: Thank you, your Honor.

4 MR. JOHNSTON: Your Honor, I am sensitive to

02:03PM

5 the court's dilemma with regard to the relief. This is
6 an area where candidly the law has not kept up with the
7 technology; and if this is permitted, it's the new norm.
8 Every -- and I have a lot of respect for plaintiff

02:04PM

9 lawyers. That's my group of people. But every
10 plaintiff's lawyer with five and \$10,000 on a big case
11 will be doing stuff like this.

02:04PM

12 We don't believe that the court can simply
13 enter an order striking pleadings right now. Wish we
14 could. I am inclined to simply request a monetary relief
15 for all of the expense of tracing through this, with then
16 an appendage to that that if it's not paid by a certain
17 date, the affirmative pleadings would be stricken.

02:05PM

18 I am still struggling with what to do with
19 this DISF stuff because we're never going to get any
20 discovery on that. That's clear to me. We have
21 Mr. Manookian who, by his testimony, knows nothing and
22 can name no one except a mystery man who doesn't speak
23 English, who isn't in this country, and may or may not be
24 in Italy or Argentina; and we're going to trial on

02:05PM

25 August 15th. So, I am open to a creative solution by

1 this court as to what we do there with regard to
2 restrictions on evidence or the striking of evidence or
3 pleadings.

02:05PM

4 But at a minimum, we think there is a
5 significant monetary penalty that is appropriate with
6 attorneys' fees and then a customized restriction and --
7 and if I may, I'll be happy to provide the court with
8 more detail of that customized idea tomorrow because
9 today is the first time I reached the conclusion that I'm
10 never going to know where that list came from. It's --
11 everyone we talk to has a different story, and it's very
12 disturbing.

02:06PM

13 THE COURT: All right. Counsel?

02:06PM

14 MR. SCHWEGMANN: Yes, your Honor. My story
15 has been consistent. My law firm and no one at my firm
16 has ever provided these clients with any Attorneys' Eyes
17 Only information ever. And they've conceded that they
18 didn't even produce them to us until the 28th; and at
19 that, it was 100 names.

02:06PM

20 Look, your Honor, if what we're here about is
21 a discovery dispute, there's a way to do that. It's
22 Rule 37. They file a motion. They say, "They didn't
23 answer this discovery"; and the court rules on the
24 objection.

02:06PM

25 If it's an injunction to take down some

1 websites, there's a way to do that. It's Rule 65 and we
2 have an injunction hearing and I raise a First Amendment
3 defense to the extent that it's appropriate and relates
4 to my client.

02:06PM

5 If it's a relief against DISF, there's a way
6 to do that; and that's in Tennessee, a court with the
7 proper jurisdiction and the proper party.

02:07PM

8 But what they've done is they've filed this
9 vague and amorphous brief that says, "We're unhappy about
10 what's happening and we just want some vague and
11 amorphous relief." That's not how it works, your Honor.
12 We're going to trial on August 15th. We've offered
13 deposition dates for Mr. Manookian and Mr. Cummings and
14 they can take that deposition and if based on what they
15 learn in that deposition --

02:07PM

16 THE COURT: Well, whose deposition do you
17 propose that they take to get the information regarding
18 DISF?

02:07PM

19 MR. SCHWEGMANN: We were in the -- I
20 personally don't know.

21 THE COURT: I mean, you heard the testimony.
22 Whose deposition do you propose they take?

23 MR. SCHWEGMANN: I don't know, but I sat here
24 and --

02:07PM

25 THE COURT: I don't know either.

1 MR. SCHWEGMANN: I looked at Mr. Manookian
2 while we were all present and here and said, "Can you
3 facilitate this?" And he nodded in the affirmative. I
4 mean, I think the court ought to hold him to that.

02:07PM

5 But I guess what I'm saying is I'm here not
6 defending the DISF which we made clear on May 23rd, again
7 on June 16th, and again on June 27th; and all this time
8 has elapsed since then before this was filed.

02:08PM

9 And I guess my point is, your Honor, I'm
10 trying to get ready for trial to defend the two
11 individuals in the law firm. None of this stuff, as far
12 as I know, is being used as evidence in this case for
13 this trial. I mean, if there's relief to be had against
14 the DISF, I think that can be done in Tennessee under
15 some kind of injunctive relief or a demand to take the
16 deposition. Certainly it's a Tennessee entity and can be
17 subject to the jurisdiction there. But I think this here
18 is a sideshow. It's a distraction from what we're trying
19 to get to, this trial, where it will all be over at that
20 point.

02:08PM

21 THE COURT: All right. Well, I'm going to
22 disagree with you that it's a sideshow. I have concerns
23 about the customer information. I -- it's a mystery how
24 that information has been obtained apparently to
25 everyone, but I have concerns that it's up on these

02:09PM

1 websites that links to your clients' websites. I think
2 that's a problem, and I think that's potentially a
3 violation of the protective order.

02:09PM

4 So, I also -- while I think it is permissible
5 for -- to contact customers for investigation purposes, I
6 think you have to be careful in terms of the language that
7 is used when you are making those contacts; and at least
8 what has been alleged I think is close to or crossing the
9 line. So, I don't agree with you that this is a

02:09PM

10 sideshow. But it's always my preference if parties can
11 work things out themselves, that they should do that; and
12 if they can't, then I will enter an order.

02:10PM

13 So, because I do agree with you,
14 Mr. Schwegmann, that at least at this point the relief
15 sought by plaintiffs is a bit vague -- and I think that's
16 in part because of the lack of information, and I think
17 some information was at least obtained today in the
18 hearing -- I'm going to -- let's see. Today is the 12th.

02:10PM

19 Your client is getting married this weekend.
20 How long is he out? Do you know?

21 MR. SCHWEGMANN: Do you know, Mr. Correa?

22 I believe it's a week, your Honor.

02:10PM

23 THE COURT: All right. Well, I'm going to
24 give you until Friday to confer with each other, try to
25 reach an agreement on a deposition for someone in the

1 very near future that is satisfactory to plaintiffs on
2 behalf of DISF; and if no agreement is reached by the end
3 of the week, then plaintiffs can file additional briefing
4 and -- on what specific relief that are requesting.

02:11PM

5 I think -- assuming that a timely deposition
6 for DISF occurs, then I would withhold ruling on customer
7 information and other issues in this case until after
8 that deposition, as I would anticipate additional filings
9 on this issue from plaintiffs.

02:12PM

10 MR. SCHWEGMANN: Your Honor, Mr. Johnston has
11 raised this issue of counsel for plaintiffs potentially
12 violating disciplinary rules by contacting Mr. Manookian
13 directly because he represents the DISF. Could I give
14 them that permission or -- so there's no concern?

02:13PM

15 As I said before, I don't have authority for
16 the DISF. I don't represent them. I'm not sure I can
17 confer for them. You heard today that Mr. Manookian is
18 their lawyer, their counsel. He even said on the stand
19 that if he is on his honeymoon, that he would facilitate
20 that deposition via a different lawyer. Can I give them
21 some comfort that they can reach out to Mr. Manookian on
22 this directly for that purpose, that conference?

02:13PM

23 THE COURT: You can, although you certainly
24 can talk to your client as -- I realize that you don't
25 represent DISF, but certainly there are issues that cross

02:13PM

1 over into this case wherein you do represent him.

2 MR. SCHWEGMANN: I have no earthly idea how to
3 reach Mr. De Mase. I don't know -- I've never spoken to
4 the man. I don't represent him. Manookian clearly has.
5 He's offered to --

6 THE COURT: Right, I understand that.

7 MR. SCHWEGMANN: My only point is I will make
8 someone from my office available to attend that
9 deposition on whatever date it's held. All I want to do
10 is give them some comfort that I'm not going to raise any
11 disciplinary violation by them coordinating that
12 deposition with Mr. Manookian directly, who does speak
13 with him and who said on the stand he would facilitate
14 and coordinate that even if he's out.

15 THE COURT: Mr. Johnston, do you want to say
16 anything?

17 MR. JOHNSTON: I'm -- you know, I'm fine with
18 being relieved of the threat of an ethical violation for
19 contacting Mr. Manookian directly. I still don't know
20 how that can be done, quite candidly, when we're talking
21 about that in the context of a ruling in this court and
22 adverse consequences if we can't make an appropriate
23 arrangement that will affect his client on which he is
24 entitled to participate. But I'll do it without him if
25 that's what he's suggesting.

1 MR. SCHWEGMANN: I am very careful; and the
2 last thing I want to do for myself, for Mr. Correa, or
3 for my law firm is violate an order of this court. And I
4 guess I'm doing my best to say that if there's a
5 conference requirement, I will of course participate; and
6 I will, as I said, make an attorney appear at whatever
7 day that deposition occurs.

02:15PM

8 My only concern is I'm between a rock and a
9 hard place. We've said as early and as often as we can I
10 don't have authority for DISF. It's putting us in a very
11 difficult position; and as a result, all I'm trying to
12 say is you guys coordinate with the lawyer for that
13 entity to get that deposition set. We'll be there.

02:15PM

14 MR. JOHNSTON: It sounds an awful lot like
15 shoving over responsibility onto me.

02:15PM

16 MR. SCHWEGMANN: Look, I'll help facilitate
17 the conference.

18 THE COURT: I think, with that said, it's
19 probably better that the court just issue an order.

02:16PM

20 MR. JOHNSTON: I will suggest, your Honor, as
21 one of the possible -- and this may be before -- without
22 or after a deposition of DISF, which I candidly confess
23 to have zero confidence in the value of. But one
24 possibility of relief is to prevent the defendants from
25 calling any customers as witnesses in the case because of

02:16PM

02:17PM

1 their having polluted the customer base and the things
2 that they have done. That, with the monetary sanction, I
3 suggest might be the appropriate remedy. And as I said,
4 I'm happy to spend the night thinking about it and
5 provide the court with something in the morning, if you
6 would like, as well.

02:17PM

7 THE COURT: Well, I think there does need to
8 be, depending on what specific relief is sought by
9 plaintiffs, additional briefing on what is permitted by
10 courts. For example, if the court were to order that
11 these other websites are -- you know, they're protected
12 by the First Amendment in terms of free speech, however,
13 the customer information shouldn't be on the websites and
14 needs to be taken down, I need briefing from the parties
15 on is that permissible, have other courts done that
16 before, because that to me seems like a reasonable remedy
17 in this case. And, so, it would be helpful if you could
18 spend some time thinking about that, they could have a
19 chance to respond, and then the court can fashion an
20 order after that.

02:18PM

02:18PM

21 MR. JOHNSTON: I will, your Honor. And I'll
22 set this out in the briefing as well, but let me be
23 clear. Nowhere in our motion, contrary to
24 Mr. Schwegmann's understanding -- and I don't accept
25 blame for his misunderstanding this -- nowhere in our

1 motion have we suggested anything approaching a prior
2 restraint and the striking of their ability to speak.
3 There is a First Amendment right, but there is a
4 consequence when you say certain things. We have
02:18PM 5 defamation and libel and contempt of court. So, we're
6 not asking for those to be taken down. We'll live with
7 them. We don't like them. They're there. We'll live
8 with them. But there is a consequence to having violated
9 the discovery order, the protective order, the
02:18PM 10 interference, et cetera. And that's what my response to
11 you, my additional briefing, will address.

12 THE COURT: Okay. All right. I'm going to
13 issue an order regarding an expedited briefing schedule
14 for this issue, and I'll get that out by tomorrow.

02:19PM 15 MR. JOHNSTON: Thank you, your Honor.

16 THE COURT: Anything else before we adjourn?

17 MR. SCHWEGMANN: No, your Honor. Thank you
18 for your time.

19 THE COURT: All right. We'll stand in recess.

02:19PM 20 (Proceedings adjourned, 5:26 p.m.)

21 **CERTIFICATION**

22 I certify that on this date, July 17, 2017, the
23 foregoing is a correct transcript from the electronic
24 sound recording of the proceedings in the above-entitled
25 matter.

25 _____
TONYA JACKSON, RPR-CRR